



REPUBLIC OF KENYA



**Gesora v Gesora & 3 others (Succession Cause 9 of 2012)  
[2024] KEHC 5904 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5904 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
SUCCESSION CAUSE 9 OF 2012**

**TA ODERA, J**

**MAY 16, 2024**

**BETWEEN**

**CHARLES BARAKE GESORA ..... PETITIONER**

**AND**

**JOSEPHINE KERUBO GESORA ..... 1<sup>ST</sup> OBJECTOR**

**SAMUEL GEKE GESORA ..... 2<sup>ND</sup> OBJECTOR**

**CHRISTOPHER OKERO GESORA ..... 3<sup>RD</sup> OBJECTOR**

**KEPHER MONG'ARE GESORA ..... 4<sup>TH</sup> OBJECTOR**

**RULING**

1. Kennedy Preston Obare, James Omboga Osoro, Saphina Boyani Mochoronge and Jared Mokuia Nyariki herein after referred to as the applicants filed applications dated 31.10.22, 24.10.22, 10.10.22 and 26.9.22 respectively seeking to be enjoined in this cause as interested parties. The applications are based on the ground that they are purchasers for value without notice having bought parts of the estate from Charles Barake Gesora.
2. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> objectors herein filed a notice of preliminary objection dated 22.1.24 on the grounds that:
  - i. The applicants having bought various portions from one Charles Barake Gesora and not the estate of deceased have no locus standi to join the issues relating to the estate.
  - ii. The applicants are not necessary parties in the succession cause.
3. Vide the replying affidavit dated 30<sup>th</sup> of January 2023, Josephine Kerubo Gesora, the 2nd administrator / 2<sup>nd</sup> respondent in the instant applications who is also the second wife of the deceased



- averred that her stepson Charles Gesora applied to be the sole administrator of her late husband's estate and she filed an objection which was heard and determined to the effect that they be co-administrators.
4. The estate was later distributed by Justice Okwany on 11.2.22 and a confirmed grant issued. The 1<sup>st</sup> respondent was aggrieved by the said decision and moved the Court of Appeal against the said decision and while the appeal was pending the 2<sup>nd</sup> respondent realize that the 1<sup>st</sup> respondent had caused land parcel no. ISOGE/KINENI/28 to be registered in his name before confirmation of grant and then subdivided it into several portions and new numbers were issued. She later complained to the Land Registrar vide letter marked "JKG 002" Also that the Land Registrar wrote to all the beneficiaries of the illegal titles and asked them to surrender the titles to his office and the land was subsequently reverted back to the name of deceased. Also that the Land Registrar wrote to all the beneficiaries of the illegal titles and asked them to surrender the titles to his office. She stated that the recourse of the applicants is not in the estate herein but to sue 1<sup>st</sup> respondent for refund of the price and she sought dismissal of the applications. Also that the appellate court subsequently upheld the decision of the High Court on distribution of the estate.
  5. On 23.1.24, this court directed that the applications be heard together with the preliminary objection by way of written submissions.
  6. It is not disputed that Charles Barake Gesora and Josephine Kerubo Gesora obtained letters of administration which were later confirmed on 25.10.16. Charles was aggrieved by the said confirmation and he moved the Court of Appeal at Kisumu by way of appeal. While the appeal was still pending 2<sup>nd</sup> respondent got information that land parcel no. Isoge /Kineni /28 was fraudulently transferred to his name and then he caused the same to be subdivided the same and new numbers were issued. The applicants claim that they are purchasers for value without notice as at the time they bought the parcels the 1<sup>st</sup> respondent was the registered owner of the said land parcel Isoge /Kineni /28 as per the certificate of search which they have annexed indicating that 1<sup>st</sup> respondent was registered as the owner of the said land parcel on 26.11.20.
  7. I will proceed to deal with the preliminary objection first and this will determine whether I will proceed to merits or demerits of the applications.
  8. I have carefully considered the preliminary objection and I have looked at the applications, replying affidavits, the record and the able submissions by counsel.

### **Issue of determination.**

Whether the High Court has jurisdiction to entertain the applications herein.

9. The sole issue for determination is whether this court has jurisdiction to determine the applications herein, it is trite law that Jurisdiction is everything as was held in the celebrated case of In *Owners of motor vehicle M.V Lillian V Caltex Oil (Kenya) Limited* (1989) KLRI, the court had this to say on the issue of jurisdiction;

‘I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for continuation of proceedings pending other evidence. A court of Law downs its tools in respect of the matter before it in the moment it holds the opinion that it is without jurisdiction.’



10. I have carefully considered the objection and the submissions relating to it. The applicants say that they are buyers from 1<sup>st</sup> respondent who was registered owner of land parcel no. Isoge /Kineni /28. The respondents have submitted that since the applicants neither bought the parcels from the deceased or the estate they are not necessary parties herein. I have seen the search and the land sale agreements annexed to the applications by the applicants and the confirmed grant. I note that the search indicates that the 1<sup>st</sup> respondent was registered as owner of the said land on 26.11.20 and that the grant was herein was confirmed on 25.10.2016 and that 1<sup>st</sup> respondent appealed before court of appeal in Kisumu and judgment was delivered on 11.2.22 upholding the confirmation of grant, 2<sup>nd</sup> respondent said she was not aware of the purported transfer to 1<sup>st</sup> respondent and the purchasers and they were joint administrators. It is trite law that when there are more than one administrator they must administer the estate jointly dependents. The appeal was also yet to be determined and so a confirmed grant could not be extracted. It thus goes without saying that the purported transfer to 1<sup>st</sup> respondent was fraudulent and the resultant transactions on the parcel were null and void. In any event the applicants are not dependants under Section 29 of the Law of Succession Act. The proviso to section 82 of the Law of succession Act bars administrators from selling any immovable property before confirmation of the grant. The applicants were purchasers from the 1<sup>st</sup> petitioner and not the estate of the deceased. They do not qualify as creditors of the estate of deceased under section 83 (d) of the Law of succession Act. In the Estate of M’Murianki M’Mugwika (Deceased) [2019] eKLR, where the court held that;

“The Law of Succession act and the rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased, and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of the survivors and beneficiaries and distribution of the assets”

11. The issues in the applications are purely between the applicants and Charles Barake Gesora and has nothing to do the estate herein.

The applicants cannot thus seek to enforce the said agreements before this court against the estate herein. The aforesaid acts of the 1<sup>st</sup> respondent amounted to intermeddling with the estate of the deceased within the meaning of Section 45 of the Law of Succession Act. As the good old maxim says “out of a wicked act there is no cause of action”.

12. The jurisdiction to hear and determine disputes relating to the environment, use and occupation of and title to land is provided for under Article 162(2) (b) of the Constitution of Kenya, 2010. Further, Section 13 of the Environment and Land Court Act also provides that;- “The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land. In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—

- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- (b) relating to compulsory acquisition of land;
- (c) relating to land administration and management;



- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
  - (e) any other dispute relating to environment and land”.
13. Article 165 (5) (b) of the Constitution bars the High Court from usurping the Jurisdiction of Courts of equal status established under Article 162. The recourse of the applicants herein thus does not lie in this succession court but in the Environment and Land relations court by virtue of Article 162 of the Constitution. The applicants thus have no locus standi in this case as rightly submitted by the respondents .
14. I uphold the preliminary objection dated 22.1.24. This court lacks jurisdiction to determine the applicants claim of purchasers who bought part of the estate before confirmation of grant.
15. Having upheld the preliminary objection, the applications for joinder must therefore fail and they are thus stuck out with costs to the respondents.

T.A ODERA

JUDGE

16.5.24

**DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF -**

Mutuku hold brief for Mr. Mouko for 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> objector.

Kennedy Obare - Applicant

James Osoro - Applicant

George Gesora – beneficiary

Christopher Gesora 3<sup>rd</sup> respondent

Samuel Gesora - 3<sup>rd</sup> respondent

Kepha Gesora - 4<sup>th</sup> respondent

Zablon Barake - beneficiary

Court Assistant - Oigo

**Mutuku:** I seek copies of the ruling.

**Order:** Same be supplied upon payment.

**T.A ODERA**

**JUDGE**

