



In re Estate of Stephen Murathi Muiruri - Deceased (Civil Suit E029 of 2021) [2024] KEHC 10666 (KLR) (7 June 2024) (Ruling)

Neutral citation: [2024] KEHC 10666 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL SUIT E029 OF 2021
DO CHEPKWONY, J
JUNE 7, 2024**

IN THE MATTER OF THE ESTATE OF STEPHEN MURATHI MUIRURI- DECEASED

BETWEEN

LOISE NJOKI MURIITHI APPLICANT

AND

PAULINE WANJUE MURATHI RESPONDENT

AND

SIMON NGURE MURATHI INTENDED INTERESTED PARTY

RULING

1. What is before this court for determination is the Notice of Motion application dated 15th July, 2022 which seeks the following orders:
 - a. That Simon Ngunre Murathi be enjoined in these proceedings as an interested party.
 - b. That the Originating Summons dated 22nd November, 2021 be struck out.
 - c. That costs of the application be provided for.
2. The Application is based on the Supporting Affidavit of Simon Ngunre Murathi as the Intended Interested Party “hereinafter IIP” sworn on 15th July, 2022 and the grounds as set out on its face.
3. According to the Interested Party, he is the registered proprietor of the subject properties being Kiambaa/Ruaka/3657 and Kiambaa/ Ruaka/3658 which the Applicant and the Respondent are holding in his trust. He holds that in Thika ELC Misc. Application No. 40 of 2020, the court ordered the Applicant and the Respondent to sign transfer documents towhich ruling is yet to be appealed against, but instead there is a pending application for its review.



4. The Intended Interested Party has stated that the Applicant is seeking a declaration that the properties herein are matrimonial property between her and the deceased despite the application for the Matrimonial Property Act ceasing to apply after the death of the deceased.
5. The Intended Interested Party holds that the Applicant listed properties which are not registered in the name of the deceased but are registered in his name. For this reason, the court cannot issue orders against persons who are not in listed as parties in the suit and therefore his enjoinder as an Interested Party will help the court to adjudicate and settle all the questions in the suit.
6. In response, the Applicant filed Grounds of Opposition dated 17th July, 2023 wherein she stated that the court cannot determine the dispute which relates to matrimonial property between her and the deceased as he is not a spouse to the marriage. According to the Applicant, the Intended Interested Party has not met the threshold required by a party to be conjoined in the proceedings herein and being a stranger in its suit. He cannot seek substantive orders to strike out the pleadings prematurely as the prayers are reserved for parties in a suit.
7. On 28th November, the court directed the parties to canvass the application by the Intended Interested Party by way of written submissions. The Intended Interested Party filed his submissions dated 18th December, 2023 while the Applicant filed his dated 31st July, 2023.

Determination

8. Upon considering the application dated 15th July, 2022 alongside respective affidavits and written submissions filed by the parties herein, this court finds the main issues for determination being:-
 - a. Whether this court is the proper forum to adjudicate over the issues.
 - b. Whether the Intended Interested Party should be engaged in the suit.
 - c. Whether the Originating Summons should be struck out.
9. With regard to the first issue on whether this court is the proper forum to adjudicate over the dispute herein, this court is being called upon to determine whether it is seized with the jurisdiction to entertain this suit, for a declaration on properties registered in the name of a deceased person and or his behalf. In the case of Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd. (1989), the court had this to say on jurisdiction of a case:-

“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 a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”
10. The Applicant, Loise Njoki Murathe moved this court by way of Originating Summons dated 22nd November, 2021 seeking orders that:-
 - a. Spent
 - b. That, a declaration does issue that all the under listed properties which are registered in the name of the deceased/and or his behalf, and acquired during the pendency of the marriage between the deceased and the Applicant herein are held beneficially and in trust exclusively for the applicant.



- i. L.R 209/2490/26
 - ii. Kiambaa/Ruaka/1615
 - iii. Kiambaa/Ruaka/3657
 - iv. Kiambaa/Ruaka/4457
 - v. Kiambaa/Ruaka/4458
 - vi. Kiambaa/Muchatha/T.328
 - vii. Kiambaa/Ruaka/3656
 - viii. Kiambaa/Ruaka/T.33
 - ix. Title Deed No. 12020/27
 - x. Title Deed No. 3538
- c. That pending the hearing and determination of this suit, that the Honourable Court be pleased to stay the proceedings in Succession Cause No. 16 Of 2020- Estate Of Stephen Murathi Muiruri.
 - d. That, a declaration does issue directing the court handling the succession cause with respect to the Estate of Stephen Murathi Muiruri take into account that the mode of distribution of the estate of the deceased does take into account the Applicant's financial and non – financial contribution to the acquisition and development of the deceased's estate vis – a – vis that of the Respondent in any event.
 - e. Any other relief deemed fit to grant by the Honourable Court as may be adequate to meet the ends of justice.
 - f. That the cost of the Summons be borne by the Respondent.
11. The Intended Interested Party, Simon Ngure Murathe, vide a Notice of Motion application dated 15th July, 2022 has sought for orders that:
- a. He be enjoined in these proceedings as an Interested Party.
 - b. The Originating Summons dated 22nd November, 2021 be struck out.
12. In the circumstances , the Applicant argues that this is a matrimonial matter, hence the interest in question is purely matrimonial in nature as she seeks to determine the matrimonial contribution towards the entire matrimonial state and not just the two properties cited by the proposed Interested Party. She mentions that the Originating Summons is brought pursuant to Section 17 of the Matrimonial Property Act. She contends that the proposed interest is not a necessary or proper party to this suit and therefore lacks any locus or interest capable of being determined herein.
13. On the other hand, it is the Intended Interested Party's argument that he is the legitimate proprietor of Kiambaa/Ruaka/3657 and Kiambaa /Ruaka/3658, which he seeks to have excluded from prayer No. 2 of the Originating Summons. He has attached copies of Green Cards on its supporting affidavit to demonstrate that the Applicant and Respondent have filed the two properties or his written who was a member as at 22nd January, 2010.
14. Further according to Intended Interested Party, all properties held under the name of the deceased, Stephen Murathe Muiruri because subject of the Law of Succession, hence the filing of Succession



Cause No. E008 of 2022, the Estate of Stephen Murathe Muriruri before the court and therefore the application of Matrimonial Property Act No. 49 of 2013 ceased to apply. That Section 17 of the said Act gives the court jurisdiction to consider an application for declaration of right to any property but with such application to an Applicant and their spouse or former spouse and not as between co-wives as is the position herein.

15. A reading of the pleadings/particularly the Originating Summons dated 22nd November, 2021, the nature of dispute relates to intermeddling of properties which the Applicant seeks be declared as matrimonial property so she can get a share of her properties on the same. From the heading of the said Originating Summons:-

Republic Of Kenya

In The High Court Of Kenya At Kiambu

Family Division Civil Suit No. (o.s)

In The Matter Of The Estate Of Stephen Murathi Muiruri (deceased) It Is Clear That The Applicant's Husband, Stephen Murathe Muiruri was already dead at the time of filing this suit, hence Section 17 of the Matrimonial Act, Cap 152 of the Laws of Kenya cannot apply. Section 17 provides that:

“A person may apply to a court for a declaration of rights to any property that is contested between that person and a spouse or a former spouse of the person”.

16. It is worth noting that the Applicant has sought for a declaration of right to property against her co-wife and not her spouse, who is deceased. Clearly, Section 17 does not provide for co-wives and if there is any claim over properties of the deceased, Stephen Murathe Muiruri, the same should be dealt under the Law of Succession and not the Matrimonial Property Act.
17. Be that as it may, the court find that the Applicant has moved the wrong forum as the rightful forum to determine the distribution of an Estate of a Deceased is the Succession Court while the rightful forum to determine disputes on ownership of properties, and or land, is the Environment and Land Court.
18. In the upshot, the court find that the Originating Summons dated 22nd November, 2021 has no basis in law and this court cannot take any further step in the matter for lack of jurisdiction and proceeds to down its tools.
19. Consequently, the Originating Summons dated November 22, 2021 and any other pending application in this matter be and are hereby struck out for want of jurisdiction.

It is so ordered.

RULING DELIVERED VIRTUALLY VIA MICROSOFT TEAMS AT KIAMBU THIS 7TH DAY OF JUNE , 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:-

Mr. Mutugi holding brief for Mr. Kihang'a counsel for Applicant

Mr. Mwangi Ndegwa counsel for Intended Interested Party/Appellant

Mr. Gichigo counsel for 1st Respondent

Court Assistant - Martin

