



**Kang'onde v Ngore (Succession Cause 329 of 2004)  
[2023] KEHC 18066 (KLR) (23 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18066 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 329 OF 2004**

**EM MURIITHI, J**

**MAY 23, 2023**

**IN THE MATTER OF THE ESTATE OF M'GACIURU GACIURU (DECEASED)**

**BETWEEN**

**MIRIAM KANG'ONDU ..... PETITIONER**

**AND**

**JULIUS NGORE ..... APPLICANT**

**RULING**

1. On 22/2/2022, the Court (P.J Otieno J.) adjourned the taking of the oral evidence in hearing of the Summons dated 4/2/2014 for revocation of the grant and directed that:

“Meanwhile, from evidence so far recorded, I get the impression that the claim is that alleging trust or just title to land. It is not disputed that the land was and remain registered in the name of the deceased. That scenario has made pose to myself a question whether the court is properly seized of jurisdiction in the matter. With such fear of lack of jurisdiction, I direct that the court becomes clear whether or not it has jurisdiction in that matter. That must be dealt with in limine and at the earliest opportunity so if there is no jurisdiction, no further judicial time is employed. For that reason, let counsel attend court and address the court, based on the evidence gathered so far, if there is jurisdiction. That be done on the 18/5/2022.”

2. The parties filed their respective submissions on the issue of jurisdiction on 9/12/2022 and 25/11/2022.
3. The applicant urges that the application is properly before the court and the court's directions of 22/2/2022 offend the clear provisions of section 7 of the *Civil Procedure Act* and the Doctrine of *Res Judicata*, and cites *Zipporah Wanjiku Njoroge v Zipporah Wanjiku Mwangi* (2017) eKLR. He urges



the court to be guided by articles 159(2)(d) and 165(3)(a) of the Constitution and allow the application to be heard and determined on merits.

4. On her part, the petitioner urges that the applicant's claim is based on trust and this court has no jurisdiction to entertain it, as held in *Re Estate of Samuel Kathieri (Deceased)* (2019) eKLR. She urges the court to dismiss the summons dated 4/2/2014 with costs.
5. The petitioner also filed a list of authorities on 8/7/2022.

### **Analysis and Determination**

6. The issue for determination is whether this court has the requisite jurisdiction to entertain a claim of trust.
7. Whereas the applicant contends that the court is clothed with the requisite jurisdiction to hear and determine the claim, the petitioner is certain that the claim ought to be heard and determined elsewhere.
8. This court respectfully agrees with the case of *Zipporah Wanjiku Njoroge v Zipporah Wanjiku Mwangi* (2017) eKLR where the Court of Appeal (G.B.M. Kariuki, Sichale & Kantai, JJA) expressed itself thus:

“In succession proceedings where, as here, existence of trust is alleged in respect of land claimed to be family land, it is appropriate for the court to give directions on the procedure to be followed for adduction of evidence. Such procedure cannot be discredited merely on account of the fact that succession proceedings are designed to determine heirs and distribution of estate and not issues of trust. The fact that the court was called upon to determine whether the suit land was beneficially held and therefore not subject to distribution or whether it was family land and therefore liable to distribution among the heirs in the succession in itself justified the determination of the issue of trust. Where, as here, the issue (of trust) arises in succession proceedings whether the land is family land and therefore is subject to trust or whether it is owned absolutely by the deceased, and therefore is not subject to distribution, the court hearing the succession proceedings has jurisdiction to determine the issue and to give appropriate directions on the hearing. This is in line with the jurisdiction vested in the High Court by article 165 (3) (a) of the Constitution and section 47 of the Law of Succession Act, cap 160. Moreover, the Constitution of this country enjoins and expects the courts to determine the dispute fairly and with expedition, and without undue regard to technicalities of procedures - see articles 159 (2) (d), 48; 50 (1); 10(1) (A); 10 (2) (b); 20 (2); 21(1), 165 (3) (a) and 164 (3).”

9. In the midst of hearing summons for revocation of grant, an issue of whether the deceased herein held the land in dispute in trust for the applicant has arisen, and this court is clearly vested with the jurisdiction to determine such an issue in view of the provisions of section 47 of the Law of Succession Act and article 165 of the Constitution.

### **Orders**

10. Accordingly, for the reasons set out above, the court finds that it has the requisite jurisdiction to hear and determine the Summons for Revocation of the Grant dated 4/2/2014 together with the issues raised therein.
11. Directions on the further hearing of this matter shall be taken on a date to be fixed in consultation with counsel.



Order accordingly.

**DATED AND DELIVERED THIS 23<sup>RD</sup> DAY OF MAY, 2023.**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES:**

M/S. Carlpeters Mbaabu & Co. Advocates for the Petitioner/Respondent.

M/S Haron Gitonga & Co. Advocates for the Objector/Applicant.

