



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC MISC. APPLICATION NO. E021 OF 2021

PETER MWAURA THAREE.....APPLICANT

=VERSUS=

ROBERT NJENGA MWAURA.....RESPONDENT

RULING

The dispute before me concerns all that parcel of land known as Dagoretti/Rituta/T.302 (hereinafter referred to only as “the suit property”). The suit property is owned by the applicant’s and the respondent’s father, Stephen Mwaura, deceased (hereinafter referred to only as “the deceased”). The deceased died on 31st October, 1971. The deceased was survived by a widow, Joyce Nungari Mwaura (hereinafter referred to only as “the widow”) and a number of children. The applicant and the respondent are some of the children of the deceased.

In the application before the court, the applicant has contended that the suit property is developed with several structures. The applicant has averred that some of these structures were constructed by the widow. The applicant has averred that most of the structures on the suit property are rented out to tenants. The applicant has averred that the respondent is collecting rent from the tenants occupying the structures that were put up by the widow. The bone of contention in the application before the court is the distribution or sharing of the rent being collected by the respondent from the structures which were put up by the widow on the suit property and the settlement of the utility bills accruing from the use of the said structures.

In his Notice of Motion application dated 5th February, 2021, the applicant has sought the following orders against the respondent:

1. That the respondent be restrained from collecting rent from the premises erected on the suit property and that the rent from the said premises be deposited in court after payment of water, electricity, land rates and lawyer’s bills.
2. That an agent be appointed to be collecting the said rent from the tenants.
3. That the rent collected be distributed to the beneficiaries after the payment of the bills aforesaid.
4. That the costs be paid by the respondent.

The applicant has contended that the rent being collected by the respondent from the structures on the suit property which were put up by their mother (the widow) who is also deceased is supposed to be shared between all the surviving children of the deceased. The applicant has also contended that part of the rent should be utilized to clear the expenses related to the suit property such as land rates, water bills and electricity bills. The applicant has contended that whereas the respondent has been collecting rent from the structures on the suit property, he has failed to share the same with the applicant and has also refused and/or failed to pay land rates for the suit property, and electricity and water bills. It is for the foregoing reasons that the applicant has moved the court for the orders sought in the application before the court.

The respondent opposed the application through a replying affidavit sworn on 20th April, 2021 and a notice of preliminary objection dated 27th July, 2021. In the preliminary objection, the respondent has contended that the dispute before the court is over a property that belongs to a deceased person and as such the same should be heard and determined by a court that deals with succession matters. The respondent has contended that this court has no jurisdiction over succession disputes and as such cannot grant the orders sought by the applicant. In the replying affidavit, the respondent has reiterated that what is before the court is a succession dispute and as such the court has no jurisdiction to determine the same. The respondent has denied that he is collecting rent from the structures on the suit property. The respondent has contended that the structures that were put up by their mother (the widow) from which the applicant claims that he is collecting rent were demolished by the applicant to create room for his own developments. The respondent has contended that it is the applicant who has put up structures on the suit property which does not belong to him from which he is collecting rent. The respondent has contended that it is the applicant’s tenants who are using electricity and water connected to the suit property and as such it is the applicant and not the respondent

who is liable to settle the bills he is complaining about. The respondent has contended that he has nevertheless paid some of the water and electricity bills. The respondent has contended that if any accounting is to be done, the person to render accounts should be the applicant. The respondent has contended that the applicant should account for the rent that he is collecting from the suit property.

I have considered the applicant's application together with the affidavit filed in support thereof. I have also considered the replying affidavit and notice of preliminary objection filed by the respondent in opposition to the application. Finally, I have considered the oral submissions that were made before me by the parties. The following is my new on the matter. It is not in dispute that the suit property belongs to the applicant's and the respondent's deceased father, Stephen Mwaura (the deceased). The property was fraudulently transferred to the name of the parties' brother, Godfrey Kaguru Mwaura (also deceased). In a judgment delivered by the High Court on 18th March, 2014, the court ordered that the registration of Godfrey Kaguru Mwaura as the owner of the suit property be cancelled and the property returned to the name of Stephen Mwaura (the deceased). It is not clear why the parties herein have not taken the initiative of executing the said court order so as to have the suit property in the name of the deceased.

Be as it may, the property belongs to the deceased. It is now vested in his estate. The dispute before the court concerns the distribution of rent being collected from the tenants on the suit property and the settlement of expenses or liabilities accruing from the property. It is not in dispute that the beneficiaries of the estate of the deceased have not applied for grant of letters of administration in respect of his estate. I am in agreement with the contention by the respondent that this court is not seized of jurisdiction to determine the distribution of the deceased's estate. It is the court that has such jurisdiction that will be able to determine not only the assets and liabilities of the estate of the deceased but also the beneficiaries and their shares in the estate. It is also that court that will be able to determine how the assets of the estate are to be distributed and liabilities settled.

This court as rightfully pointed out by the respondent has no jurisdiction over succession disputes. This court cannot therefore order or direct how the beneficiaries of the estate of the deceased should share the estate assets and settle the estate liabilities. There is no dispute over the ownership of the suit property or the use or occupation thereof. The dispute is over the distribution of the income from the structures on the suit property. Since the suit property is owned by the deceased, the income therefrom save where it is proved otherwise is an estate income the distribution of which can only be determined by the succession court. The liabilities accruing from the suit property save also as may be proved otherwise are liabilities of the estate and only a succession court can give directions on how it should be settled.

Due to the foregoing, this court has no jurisdiction to grant the orders sought by the applicant. The applicant should apply for grant of letters of administration in respect of the estate of the deceased in a court of competent jurisdiction. After lodging a petition for grant, he will be at liberty to apply to that court for the determination of the issues raised in the present application.

The upshot of the foregoing is that the applicant's application is incompetent the same having been filed in a court without jurisdiction. The Notice of Motion dated 5th February, 2021 is accordingly struck out. Each party shall bear its own costs.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF OCTOBER 2021

S. OKONG'O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

The Applicant in person.

The Respondent in person.

Ms. C. Nyokabi-Court Assistant