



REPUBLIC OF KENYA



**Njeru v Njeru & another (Civil Case E007 of 2022)  
[2023] KEHC 18599 (KLR) (Civ) (2 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18599 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL CASE E007 OF 2022**

**MA ODERO, J**

**JUNE 2, 2023**

**BETWEEN**

**JOSEPH NGATIA NJERU ..... PLAINTIFF**

**AND**

**LOISE NGINA NJERU ..... 1<sup>ST</sup> DEFENDANT**

**SAKINA STAR LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before this Court for determination is the Notice of Motion dated January 27, 2023 by which the 2<sup>nd</sup> Defendant Sakina Star Limited seeks the following orders:-

- “1. Spent.
2. That this Honourable Court be pleased to review and or set aside the Ex parte Order dated 16<sup>th</sup> January 2023 maintaining the status quo on Land Reference Number 209/3531/13 pending the hearing and determination of this application.
3. That this court makes a determination, based on the facts of the case, that it does not have jurisdiction to handle this matter.
4. That this Honourable Court makes an order transferring this matter to the Environment and Land Court forthwith.
5. That in the alternative, this Honourable Court grants an earlier date, on priority basis, for the hearing of this instant application as well as the application dated 14<sup>th</sup> December 2022.



6. That in any event, this Honourable Court be pleased to review and or set aside the Ex parte Order dated 16<sup>th</sup> January 2023 maintaining the status quo on Land Reference Number 209/3532/13 Kinshasa Road.
  7. Costs of this application be provided for by the Plaintiff.
  8. Any other similar orders this Honourable Court deems just, fair and in the interest of justice to provide.
2. The Application was premised upon Article 40 and Article 159 (2) (d) of *the Constitution* of Kenya 2010, Section 13 (1) of the Environment and *Land Act* Sections 1A, 1B and 3A of the *Civil Procedure Act*, Cap 21 Law of Kenya Section 11 and 72 of the *Interpretation and General Provisions Act*, Order 45 Rule 1 and Order 51 Rule 1 of the *Civil Procedure Rules 2010* and all other enabling provisions of Law and was supported by the Affidavit of even date sworn by Shariff Abdullahi Osman the Director of the 2<sup>nd</sup> Defendant.
  3. The plaintiff Joseph Ngatia Njeru opposed the application through the Replying Affidavit dated 2<sup>nd</sup> March 2023. The matter was canvassed by way of written submissions. The 2<sup>nd</sup> Defendant relied upon their written submissions dated 16<sup>th</sup> March 2023, whilst the Plaintiff filed the written submissions dated 3<sup>rd</sup> April 2023.
  4. The Plaintiff herein commenced their suit by way of a plaint dated 14<sup>th</sup> December 2022 seeking injunctive orders as against the Respondents in respect of Nairobi LR No. 209/3531/13 (herein after ‘the suit property’)
  5. Thereafter the Plaintiff filed another Notice of Motion application dated 20<sup>th</sup> January 2023 seeking orders that the status quo in respect of the suit property as of 18<sup>th</sup> December 2022 be maintained and further seeking to have the application heard together with the Notice of Motion dated 14<sup>th</sup> December 2022.
  6. The court directed that the application dated 20<sup>th</sup> January 2022 be served. The court further made Ex Parte orders to the effect that the status quo as at 18<sup>th</sup> December 2022 be maintained pending the hearing and determination of the application. The matter was given a mention date of 27<sup>th</sup> January 2023.
  7. The 2<sup>nd</sup> Defendant then filed the Notice of Motion dated 27<sup>th</sup> January 2023 seeking to set aside the Ex Parte orders issued on 16<sup>th</sup> January 2023. The 2<sup>nd</sup> Defendant averred that the application dated 14<sup>th</sup> December, 2022 was served upon them on Friday 12<sup>th</sup> January 2023. That the mention date of 16<sup>th</sup> January 2023 was less than seven (7) clear days of service as required by the Civil Procedure Rules. That their Advocate was unable to attend court due to a prior engagement at the CID Headquarters and thus the orders of status quo were made in their absence.
  8. The 2<sup>nd</sup> Defendant asserts that they are the legal, bonafide and registered owners of the suit property having purchased the same from the lawful owner Loise Ngina Njeru (the 1<sup>st</sup> Defendant herein). That there was no notice of any claim by a third party over the suit property at the time of purchase.
  9. The 2<sup>nd</sup> Defendant contends that this matter is not a Succession or Family Dispute but that in actual fact the Plaintiff’s claim is a land dispute which falls under the jurisdiction of the Environment and Land Court.
  10. The 2<sup>nd</sup> Defendant urges that they are suffering significant losses due to the unlawful occupation by the Plaintiff of their property arising from the status quo orders issued by the court. That the dispute



between the Plaintiff and his mother (the 1<sup>st</sup> Defendant) does not involve the 2<sup>nd</sup> Defendant. That the Plaintiff being the son of the 1<sup>st</sup> Defendant has no registerable or justiciable rights over the suit property. The 2<sup>nd</sup> Defendant urges that the orders of status quo be set aside and that the matter be referred to the ELC for hearing and determination.

11. The 1<sup>st</sup> Respondent Loise Ngina Njeru who is the mother of the Plaintiff filed a Replying Affidavit dated 10<sup>th</sup> January 2023 in which she confirmed that she became a widow in the year 1969. That due to ethnic tensions, she left Kapsabet and relocated to Nyandarua. The 1<sup>st</sup> Respondent states that she sold all her plots in Kapsabet and used the proceeds of sale to finance her relocation with the family to Nyandarua.
12. The 1<sup>st</sup> Respondent further stated that she reinvested by purchasing LR No. 209/3531/13 Kinshasa Road Nairobi for Kshs.3,200,000 which property was registered in her sole name. The 1<sup>st</sup> Respondent states that the proceeds of sale of the Kapsabet Property were not sufficient to purchase the suit land so she took a loan with HFCK for Kshs.1,500,000 in order to raise the full purchase price required.
13. The 1<sup>st</sup> Respondent stated that she later decided to sell the suit property to the 2<sup>nd</sup> Defendant in the year 2022. That she transferred the suit land to the 2<sup>nd</sup> Defendant upon payment of the full purchase price. The 1<sup>st</sup> Respondent is categorical that the Plaintiff has no interest or “share” in the suit property and denies that she held the same in trust for any party.
14. As stated earlier the Plaintiff opposed the application. He insisted that this was infact a Succession dispute which arises out of a family dispute of disinheritance. The Plaintiff claimed that the 1<sup>st</sup> Defendant (his mother) actually held the suit property in trust for the beneficiaries of the estate of his late Father Micheal Njeru Kiriaku
15. The Plaintiff avers that his late Father was the owner of Kapsabet LR 1181/40. That following the death of his father in 1969 the 1<sup>st</sup> Defendant filed Succession proceedings through which the suit land was transferred to her to hold in trust for her minor children.
16. That in the year 1993 the family agreed to sell the Kapsabet property and used the proceeds to purchase LR No. 209/3531/13 for purposes of building units for rental and agreed that the rent proceeds would be divided amongst the family members. The Plaintiff further claims that it was agreed that the suit property would be registered in the name of the 1<sup>st</sup> Defendant while the Plaintiff was given the duty of managing the properties.
17. The Plaintiff claims that the family took out a mortgage and put up residential houses. That he contributed towards servicing the mortgage and made payments for land rates with full knowledge and consent of family members. That he put up his matrimonial home on the suit property as well as some rentals.
18. The Plaintiff states that he was therefore very surprised to learn that the 1<sup>st</sup> Defendant had sold the suit property to the 2<sup>nd</sup> Defendant for a consideration of Kshs.58,500,000. The Plaintiff claims to be entitled to a share of the suit property on the basis that the same was acquired using proceeds from the sale of his late father’s Kapsabet property. He pleads that if the status quo orders are lifted then he stands to be evicted by the 2<sup>nd</sup> Defendant. The Plaintiff urges the court to dismiss this application entirely.

### **Analysis and Determination**

19. I have considered the application before this court, the Reply filed thereto as well as the written submissions filed by both parties. The two issues for determination are:



- (i) Whether the orders of status quo ought to be reviewed.
  - (ii) Whether this court has jurisdiction to handle this matter.
20. It is trite law that jurisdiction is a critical and central matter over which a case stands or falls. As such I will proceed to consider first the question whether this court has jurisdiction over this dispute.
21. The jurisdiction of a court will flow either from *the Constitution* or from legislation or both. In *Samuel Kamau Macharia -vs-kenya Commercial Bank & 2 Others [2012]* eKLR the Supreme Court of Kenya observed as follows:-
- “...the issue as to whether a court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality, it goes to the very heart of the matter for without jurisdiction, the court cannot entertain any proceedings...” [own emphasis]
22. The locus classicus on jurisdiction is the case of *Owners Of Motor Vessel 'Iillian S v Caltex Oil (kenya) Limited [1989]* eKLR in which it was held as follows:-
- “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 other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
23. The jurisdiction of the High Court is set out in Article 165(3) of *the Constitution* of Kenya 2010 which provides:-
- “(3) Subject to clause (5) the High Court shall have-
- (a) Unlimited original jurisdiction in Criminal and Civil Matters”
24. Therefore the jurisdiction of the High Court is subject to Clause (5) of the same Article which provides that:-
- “(5) The High Court shall not have jurisdiction in respect of matters:-
- (a) Reserved for the exclusive jurisdiction of the Supreme Court under this Constitution, or
  - (b) Falling within the jurisdiction of the courts contemplated in Article 162(2). [own emphasis]
25. The Environment and Land Courts (ELC) is one of the courts established pursuant to Article 162(2) of *the constitution*.
26. It is important at this point to note that this court is sitting as a Probate Court with the mandate to oversee and/or supervise the distribution of an estate to the genuine heirs. It is pertinent to note that the Plaintiff's suit is not a Succession dispute. The Plaintiff concedes that letters of Administration relating to the estate of his late Father were properly issued to the 1<sup>st</sup> Defendant. Equally the Plaintiff does not take only issue with the transfer of the Kapsabet Land to the 1<sup>st</sup> Defendant.
27. The Plaintiff claims to a share in Nairobi LR No. 209/3531/13 which he claims was purchased from the proceeds of sale of the Kapsabet Property which belonged to his late Father.



28. It is manifest from the pleadings on record that the suit land was transferred to the 1<sup>st</sup> Defendant on 15<sup>th</sup> December 1993. The 1<sup>st</sup> Defendant then sold the suit land to the 2<sup>nd</sup> Defendant through an Agreement for Sale dated 8<sup>th</sup> July 2022 (Annexure ‘SA 07’ to the supporting Affidavit dated 27<sup>th</sup> January 2023). A transfer dated 11<sup>th</sup> November 2022 was effected which transfer was endorsed on the Title Document to the suit land (See Annexure ‘SAO 11’ to the supporting Affidavit).
  29. Therefore as matters now stand the suit property is registered in the name of the 2<sup>nd</sup> Defendant.
  30. By this suit the Plaintiff is attempting to close the stable door after the horse has bolted. On the face of it there is no relationship between the suit property and the Plaintiff’s late Father. Entry No. 6 on the Title Deed indicates a transfer of the property absolutely to the 1<sup>st</sup> Defendant Loise Ngina Njeru – there no indication that she was to hold the property in trust for any parties.
  31. The Plaintiff’s claim to a share in the suit propriety cannot therefore be entertained by this Probate Court as this is not a Succession dispute. I agree with the 2<sup>nd</sup> Defendant that this is a dispute over ownership of the suit property.
  32. Matters relating to the ownership use and occupation of land have now under Article 162 of *the Constitution* of Kenya 2010 been mandated to be determined by a specialized court being the Environment and Land Court (‘ELC’).
  33. Section 13 of the Environment and Land Court Act provides for the jurisdiction of that court as follows:-
13. Jurisdiction of the Court
    - (1) 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 under and land.
    - (2) 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. [Rev.2012] No.19 of 2011 Environment and Land Court 9 [Issue 1]
  34. Therefore, the correct and proper forum before which the Plaintiff ought to ventilate claim to the suit land is the ELC. The Environment and Land Court is the only court exclusively mandated by law to determine the question of ‘ownership’ of the suit land.
  35. I therefore find this suit was wrongly filed in the High Court being disguised as a Succession dispute. It is in fact a dispute over ownership of property which dispute falls squarely under the jurisdiction of the ELC. Therefore I find that this court has no jurisdiction to entertain this suit. The same is hereby transferred to the ELC for hearing and determination.



36. Having found that this court lacks the jurisdiction to hear and determine this dispute, I find it unnecessary to consider the merits or otherwise of the prayer for review of the status quo orders. As stated in the Motor Vessel SS Lillian Case, this court must now down its tools.

37. Suffice to say that it is trite law that orders made without requisite jurisdiction are null and void. In the case *Joseph Muthee Kamau & Another v David Mwangi Gichure & Another [2013]* eKLR the court stated as follows:-

“When a suit has been filed in a court without jurisdiction, it is a nullity. Many cases have established that; the most famous being *Kagenyi v Musirambo [1968] EA 43*. The same would apply to pecuniary jurisdiction in a claim for special damages where the liquidated sum claimed exceeds the court’s pecuniary jurisdiction.

We hold that jurisdiction cannot be conferred at the time of delivery of judgement. Jurisdiction does not operate retroactively. Jurisdiction must exist at the time of filing suit or latest at the commencement of hearing.” [own emphasis]

38. Accordingly the orders of status quo made by this court on 16<sup>th</sup> January 2023 are declared to be null and void and are hereby set aside. Finally the Notice of Motion dated 27<sup>th</sup> January 2023 is allowed. Costs will be met by the Plaintiff.

**DATED IN NAIROBI THIS 2ND DAY OF JUNE, 2023.**

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**MAUREEN A. ODERO**

**JUDGE**

