



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Samwel Cheruiyot Langat (Deceased) (Succession Cause 100 of 2012) [2024] KEHC 14076 (KLR) (7 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14076 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 100 OF 2012
JK SERGON, J
NOVEMBER 7, 2024**

BETWEEN

LEAH CHEBII LANGAT PETITIONER

AND

JOSEPHINE LANGAT RESPONDENT

RULING

1. The application coming up for determination is a notice of dated 12th April, 2024 seeking the following orders;
 - i. Spent
 - ii. That the respondent herein be restrained from encroaching/trespassing into the parcel of land known as Kericho/Kapsuser/7993 with immediate effect.
 - iii. That the respondent herein be ordered to remove all her belongings, developments and/or her plants from the parcel of land known as Kericho/Kapsuser/7993 as the petitioner/applicant has been denied use of the said land by the respondent and she has proceeded to plant tea bushes on the applicants parcel of land without any colour or right.
 - iv. That this honourable court be pleased to issue an order to remove the respondents properties including the newly planted tea bushes on my parcel of land and the same be done with assistance from Kapsoit Police Station to ensure that peace prevails on her parcel of land known as Kericho/Kapsuser/7993.
 - v. That the costs of the application be provided for by the respondent.
2. The application is supported by grounds on the face of it and the supporting affidavit of Leah Chebii Langat the applicant herein.



3. The applicant avers that on the 1st September, 2023 this court issued an order to effect sub division of the properties consisting of the estate of the deceased between his wives, being the applicant and the respondent herein.
4. The applicant avers that the sub division was done and she was issued with a title. The applicant avers that the respondent has encroached on her parcel of land and it has become impossible for the applicant to utilise her parcel of land known as Kericho/Kapsuser/7993 because any attempts to do so has been met with resistance which has lead to a breach of peace. The applicant avers that the said encroachment continues to injure her proprietary rights.
5. The applicant avers that she needs the assistance of the police to ensure peace and safety while fencing off her parcel of land but does not have express orders directing them to do so.
6. The matter came up for inter partes hearing, Mr. Malel the Learned Counsel representing the applicant stated that the application was served upon the respondent, however, there was no response. The Learned Counsel urged this Court to allow the application unopposed. There was no representation on the part of the respondent.
7. I have considered the application and find that the following issue is ripe for determination; whether to issue orders directing that respondent herein be restrained from encroaching/trespassing into the parcel of land known as Kericho/Kapsuser/7993 with immediate effect and that the same orders be effected by the Officer in Charge Kapsoit Police Station.
8. On the issue as to whether to direct that respondent herein be restrained from encroaching/trespassing into the parcel of land known as Kericho/Kapsuser/7993 with immediate effect and that the same orders be effected by the Officer in Charge Kapsoit Police Station. This court is cognisant of the fact that the application is undefended, however, this court finds that the applicant has laid a strong and cogent case warranting the interference of this Court, the respondent has without any colour of right encroached on the subject parcel belonging to the applicant pursuant to the instant succession proceedings thereby injuring her proprietary rights to the suit parcel.
9. The primary mandate of the probate court is the distribution of the estate of a deceased person. This court is sitting as a probate court and it is therefore vested with the mandate to supervise the distribution of the estate of the deceased to the genuine beneficiaries. In order to discharge this mandate the law provides that probate court may make such orders as may be necessary to protect and conserve the estate of the deceased under section 47 of the *Law of Succession Act* and rule 73 of the *Probate and Administration Rules*. In *Floris Piezzo & Another v Giancarlo Falasconi* (2014) eKLR, the Court of Appeal while considering whether an injunction can issue in a Succession Cause expressed itself as follows; “We have carefully considered the grounds of appeal, rival written and oral submissions, and the law. The application before the high Court was for temporary injunction to restrain the appellants from dealing with the suit premises in a manner inimical to the estate of the deceased. The question which arose and had to be determined first was whether the Court had jurisdiction to grant an injunction in a Succession Cause.

The appellants took the position that the Court had no such jurisdiction whereas the Respondent took the contrary position. However, the High Court was persuaded that Rule 73 of the *Probate and Administration Rules* reserved the Court’s inherent jurisdiction to allow for the grant of injunctions in deserving cases. We are in total agreement with this conclusion. We have no doubt at all that the *Law of Succession Act* gives the Court wide jurisdiction in dealing with testamentary and administration issues of an estate. Indeed Section 47 of the said Act gives the Court jurisdiction to entertain any application and



determine any dispute under the Act and to pronounce such decree and orders as may be expedient. It cannot be said that such decrees and orders would exclude injunction orders. In other words, we are of the same view that Section 47 of the Act gives the Court all-embracing powers to make necessary orders, including injunctions where appropriate to safeguard the deceased's estate. This section must be read together with Rule 73 of the *Probate and Administration Rules* which further emboldens Court's jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court. We would imagine such orders would also include injunctive orders.”

10. This court has jurisdiction to issue the orders sought vide the instant application while the probate and administration proceedings are still pending. However, where the court has heard and determined the succession proceedings, the court loses jurisdiction to entertain such an application because it is functus officio.
11. There is no doubt that this court heard and concluded the succession proceeding which led to the confirmation of the grant. This court therefore has jurisdiction to entertain the instant application. It is apparent that the application should have filed in the environment and Land Court.
12. In the end, the motion dated 12th April, 2024 is found to be improperly before this Court. The same is ordered struck out with each party bearing its own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 7TH DAY OF NOVEMBER, 2024.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Malel for the Petitioner

No Appearance for the Respondent

