



REPUBLIC OF KENYA



**In re Estate of Late Jotham Wanjohi Kariithi (Deceased) (Succession Cause 33B of 2013) [2024] KEHC 15432 (KLR) (2 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15432 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
SUCCESSION CAUSE 33B OF 2013  
RM MWONGO, J  
DECEMBER 2, 2024**

**IN THE MATTER OF THE ESTATE OF LATE  
JOTHAM WANJOHI KARIITHI .....(DECEASED**

**BETWEEN**

**EMMA WANGITHI MAINA ..... APPLICANT**

**AND**

**MARY WANJIKU WANJOHI ..... RESPONDENT**

**AND**

**DANIEL KINYUA MAINA ..... INTERESTED PARTY**

**RULING**

1. By a motion dated 12<sup>th</sup> August 2020 the Applicant/ Interested Party sought orders to the effect that:
  - a) Baricho ELC No. 73 of 2020 be stayed pending the hearing of the motion and be declared res - judicata.
  - b) Emma Wangithi Maina be evicted from L.R No. Kiine/Kibingoti/Nguguini/ 2395 which property is a sub- division of Kiine/Kibingoti/Nguguini/10.
2. In response to the aforesaid application the respondent gave notice of intention to raise a preliminary objection to the hearing of the entire suit on the following grounds:
  1. That this court lacks jurisdiction to entertain land matters.
  2. That the application is bad in law.
  3. That an eviction order cannot be sought through an application; a substantive suit must be filed.



4. That this application lacks merit and is an abuse of the court process.
3. Parties were directed to file written submission.

### **Respondent's Submissions**

4. There are no submissions on record by the respondent objector.

### **Interested Party/Applicant Submissions**

5. The Interested Party submitted that the preliminary objection herein cannot stand. This court has the jurisdiction to entertain land matters especially where it involves Succession proceedings. The applicant is involved in this matter by virtue of being a purchaser parcel from land parcel No.Kiine/Kibingoti/Nguguini/2395 which is a resultant parcel from the mother land, namely, land parcel No.Kiine/Kibingoti/Nguguini/10 that was sub-divided into Kiine/Kibinbgoto/Nguguini/2395, 2396, 2397 and 2398.
6. The applicant had been a party to this suit hence this court has jurisdiction to hear this application further. Further; other orders had been issued in this matter without the issue of jurisdiction being raised. Orders for eviction can be issued without filing another substantive suit. A substantive suit if filed against the respondent by the applicant shall be deemed as res-Judicata as against the applicant. The respondent had earlier filed Misc. Application no. 4 of 1996 which is captured in the ruling in this matter dated 29<sup>th</sup> May, 2020 where her application for revocation of grant was struck-out as the same was held to be res-judicata. The respondent did not raise any issue in respect to the applicant being made an interested party.
7. The applicant is the registered owner of land parcel No.Kiine/Kibingoti/Nguguini/2395 hence a proper party in this matter.
8. The respondent during the cause of proceeding in this matter filed Baricho ELC Case No.73 of 2020 which had been stayed pending the hearing and determination of the instant application.
9. The said matter was filed by the respondent via an originating Summons dated 15<sup>th</sup> June, 2020 which to an extent is more or less a tactic to revoke the grant in this matter as the 1<sup>st</sup> prayer thereon is that "the distribution of the estate was done in secrecy, unfair and was done at disinheriting her."

### **Issues for Determination**

10. The sole issue for determination as to whether the Preliminary Objection succeeds is whether this court has jurisdiction to hear this matter.

### **Analysis and Determination**

11. The Respondent's application on a point of Preliminary Objection is to the effect that the Interested Party/Applicant's Application dated 12<sup>th</sup> August, 2020 should be dismissed as the court has no jurisdiction to entertain land matters.
12. Further, that an eviction order cannot be sought through an application; and that a substantive suit must be filed.
13. Other than the submissions filed, the Interested Party/Applicant did not file a reply to the Preliminary Objection.



14. The locus classicus authority on the issue of preliminary objection is the case of Mukisa Biscuits Manufacturing Ltd v West End Distributors (1969) EA 696. In that case the Court observed thus:

“---a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.

Sir Charles Newbold, P. stated succinctly that:

“a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.

15. The applicant filed the application seeking for the respondent, Emma Wangithi Maina, land parcel No.Kiine/Kibingoti/Nguguini/2395 which is a resultant parcel from the mother title namely land parcel No.Kiine/Kibingoti/Nguguini/10.

16. The applicant submits that this court has jurisdiction to entertain land matters especially where it involves Succession proceedings. The applicant is the registered owner of land parcel No.Kiine/Kibingoti/Nguguini/2395 hence a proper party in this matter.

17. The Interested Party/Applicant relies on the following case where the court ordered for the eviction of an intermeddler of the estate of a deceased person: In re Estate of John Mathiu Irware (Deceased) [2022] eKLR,

“As the duly appointed administrator to the estate and the suit property having been adjudged an estate asset, the applicant is under a duty to get it in by taking possession and evicting any person who is in illegal occupation thereof and the right of such administrator is capable of protection and enforcement by the court pursuant to the protection against intermeddling under section 45 of the Law of Succession Act.”

18. Undoubtedly, the above case can be distinguished from the present case as that case involves eviction arising before a grant was issued. The present case however, involves eviction after grant has been confirmed and executed.

19. The respondent deposed in her relying affidavit that the court became functus officio after confirming the grant. Any matter arising out of the title thereafter can only be channelled to the Environment and Land Court (ELC).

20. In the case of In Estate of Cherugut Sakong - (Deceased) [2020] eKLR, Chemitei J held:

“For the above reason, this court by virtue of the limited jurisdiction it has namely determining the entitlement of the beneficiaries which it has already done, is bereft of the necessary jurisdiction. This court shall only deal with matters which directly affect the question of the confirmed grant but it must be moved to act. The court cannot therefore



stop the enforcement of the grant. Such enforcement, parties must be reminded must be done lawfully.” (Emphasis added).

21. In this case the respondent deposed that she could not be evicted from land parcel No.Kiine/Kibingoti/Nguguini/2395 as she had lived there her whole life and acquired proprietary rights that could not be extinguished by the applicant’s application.

### **Conclusion and Disposition**

22. I agree with the respondent that this court has no jurisdiction in the matter. The proper court to handle the matter is ELC Court, That Court should be approached to give the necessary reliefs required.
23. Accordingly, the preliminary objection succeeds and the applicant’s application fails.
24. No orders as to costs.
25. Orders accordingly.

**DATED AT KERUGOYA THIS 2<sup>ND</sup> DAY OF DECEMBER, 2024**

.....

**R. MWONGO**

**JUDGE**

**Delivered in the presence of:**

1. Kimotho for the Applicant/Respondent
2. Igati for Applicant Daniel Kinyua Maina
3. Murage, Court Assistant

