



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC SUIT NO. 2123 OF 2007**

**JOSEPH MUIRURI KIMANI.....1<sup>ST</sup> PLAINTIFF**

**NANCY MUTHONI.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**SALOME MUTHONI KIUNA.....1<sup>ST</sup> DEFENDANT**

**MARGARET MUMBI KIUNA.....2<sup>ND</sup> DEFENDANT**

**RULING**

What is coming up for ruling is the Plaintiffs' Notice of Motion application dated 20<sup>th</sup> January 2021 in which the Plaintiffs have sought the following orders;

1. Margaret Mumbi and George Kiuna be issued with Letters of Administration Ad-Litem to the intestate estate of Salome Muthoni Kiuna and Margaret Mumbi Kiuna who are deceased.
2. Thereafter time be enlarged and the said Margaret Mumbi and George Kiuna be enjoined in this matter as the 1<sup>st</sup> and 2<sup>nd</sup> Defendant respectively in place of the deceased Defendants.
3. The Plaintiffs' Notice of Motion dated 22<sup>nd</sup> May 2019 be allowed and the Plaintiffs' suit be re-admitted for hearing on merit.
4. Costs of the application be in the cause.

The application is supported by the affidavit of the 1<sup>st</sup> Plaintiff, Joseph Muiruri Kimani in which he has deposed as follows: This suit had been listed for hearing before Hon. Lady Justice Mwilu (as she then was) who halted the proceedings to enable the Defendants get an advocate on account of their old age. The Defendants consequently appointed the firm of Maina Makome & Company advocates on 13<sup>th</sup> September 2019 to act for them in the matter. Shortly thereafter, the said firm of advocates informed the Court that the Defendants had passed away thus stalling the hearing of the Plaintiffs' application dated 22<sup>nd</sup> May 2019. In December 2020, he visited the suit property and found that Margaret Mumbi and George Kiuna who are close relatives of the deceased Defendants had constructed structures and an academy on the suit property without Grant of Letters of Administration in respect of the estate of the deceased defendants and contrary to section 45 of the Law of Succession Act, Chapter 160 Laws of Kenya. The matter was reported to the chief and to the assistant County Commissioner who advised the relatives of the deceased Defendants to file a Succession Cause, obtain Grant of Letters of Administration and seek to be enjoined in the current suit. The said Margaret Mumbi and George Kiuna refused to apply for Grant of Letters of Administration in respect of the estate of the deceased Defendants in order to defeat this suit so that they can continue inter-meddling with the suit property.

The Plaintiffs (hereinafter referred to only as "the Applicants") filed submissions on 6<sup>th</sup> October 2021 in which they argued that the issue arising for determination in the present application is whether the Environment and Land Court has concurrent jurisdiction to grant Letters of Administration Ad-Litem to Margaret Mumbi and George Kiuna in this matter to facilitate their immediate joinder as defendants in this suit in place of the deceased Defendants in order to pave way for the hearing of the main suit on merit.

The Applicants submitted that the said Margaret Mumbi and George Kiuna who are close relatives of the deceased Defendants have retained the services of the deceased Defendants' advocates on record and have also continued to occupy the suit property. In support of their submission that this court has jurisdiction to issue a limited grant of letters of administration to the said Margaret Mumbi and George Kiuna to enable them to be joined in this suit as Defendants in place of the deceased Defendants, the Applicants relied on the cases of [Tasmac Limited v Roberto Marci & 2 others](#) [2013] eKLR and [Peter Odiwuor Ngoge v Josephine Akoth Onyango & 3 others](#), HCCC No.48 of 2013. The Applicants argued that the Environment and Land Court can issue limited grants of letters of administration under section 54 of the Law

of Succession Act as it has concurrent jurisdiction with the High Court. The Applicants argued that the application should be allowed instead of the same being referred to the Family Division of the High Court and then having the file returned to the Environment and Land Court for hearing of the suit on merit.

The advocates on record for the deceased Defendants informed the court on 19<sup>th</sup> October 2021 that they were not opposed to the application being allowed. They however filed submissions in which they submitted that the court cannot impose administrators on the estate of the deceased Defendants.

The only issue that this court has been called upon to determine is whether

the Environment and Land Court has jurisdiction to issue a Limited Grant of Letters of Administration. I have not found the cases cited by the Applicants in their submissions helpful. The cases dealt with what has being referred to as mixed grill disputes which raise issues that can be determined by both the Environment and Land Court and the High Court. Section 54 of the Law of Succession Act provides as follows:

**A court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act.**

Rule 14 of the Fifth Schedule of the Law of Succession Act provides as follows:

**When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution.**

In section 3 of the Law of Succession Act, a court is defined as:

**“court” means a court having jurisdiction under this Act in the matter in question;**

The Applicants have argued that the Court referred to in section 54 of the Law of Succession Act should include the Environment and Land Court. In Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR the court stated that:

**“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that 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...Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”**

The jurisdiction of the Environment and Land Court was discussed extensively in Republic v Karisa Chengo & 2 others [2017] eKLR where it was stated as follows:

**“Flowing from the above, it is obvious to us that status and jurisdiction are different concepts. Status denotes hierarchy while jurisdiction covers the sphere of the Court’s operation. Courts can therefore be of the same status, but exercise different jurisdictions... In this instance, the jurisdiction of the specialized Courts is prescribed by Parliament, through the said enactment of legislation relating, respectively, to the ELC and the ELRC... In addition to the above, we note that pursuant to Article 162(3) of the Constitution, Parliament enacted the Environment and Land Court Act and the Employment and Labour Relations Act and respectively outlined the separate jurisdictions of the ELC and the ELRC as stated above. From a reading of the Constitution and these Acts of Parliament, it is clear that a special cadre of Courts, with suis generis jurisdiction, is provided for. We therefore entirely concur with the Court of Appeal’s decision that such parity of hierarchical stature does not imply that either ELC or ELRC is the High Court or vice versa. The three are different and autonomous Courts and exercise different and distinct jurisdictions. As Article 165(5) precludes the High Court from entertaining matters reserved to the ELC and ELRC, it should, by the same token, be inferred that the ELC and ELRC too cannot hear matters reserved to the jurisdiction of the High Court.”**

The Environment and Land Court derives its jurisdiction from Article 162(2)(b) of the Constitution of Kenya, 2010 which provides as follows:

**162. (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—**

**(b) the environment and the use and occupation of, and title to, land.**

**(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).**

Jurisdiction of the Environment and Land Court that was conferred upon it by Parliament pursuant to Article 162(2)(b) of the Constitution is set out in section 13 of the Environment and Land Court Act 2011 as follows:

**13. (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 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.**

**(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.**

**(4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.**

Due to the foregoing, I am not persuaded that the Environment and Land Court has jurisdiction to issue a full or limited grant of letters of administration in respect of the estate of a deceased person. Neither the Constitution, the Law of Succession Act nor the Environment and Land Court Act has conferred such jurisdiction upon the Environment and Land Court. While the Environment and Land Court has equal status with the High Court, its jurisdiction is constitutionally and statutorily limited to environment and land matters. Issuing the limited grant of letters of administration sought by the Applicants would amount to taking on matters in respect of which jurisdiction is reserved for the High Court and Magistrate's Courts which handle succession matters.

The right forum for the Applicants to apply for a limited grant of letters of administration for the purposes of substituting the deceased Defendants in this suit is the Family Division of the High Court at Milimani Law Court and not the Environment and Land Court. Since the other prayers in the application were hinged on the first prayer being allowed, they are similarly not for granting.

The upshot of the foregoing is that the Applicants' Notice of Motion dated 20<sup>th</sup> January 2021 is incompetent the same having been filed in a court with no jurisdiction to hear it. The application is struck out. Each party shall bear its own costs.

**DELIVERED AND DATED AT NAIROBI THIS 15TH DAY OF DECEMBER 2021**

**S. OKONG'O**

**JUDGE**

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

N/A for the Plaintiffs

Mr. Nganga h/b for Mr. Maina for the Defendant

Ms. Betsy-Court Assistant