



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 573 OF 2016

IN THE ESTATE OF THE LATE BENJAMIN MUGO MUITA (DECEASED)

EUNICE MWERU MUITA.....PETITIONER

VERSUS

JANE MUTHONI MUGO..... BENEFICIARY

RULING

1. Article 162(2) of the Constitution establishes the Environment and Land Court (ELC). It provides that Parliament shall establish Courts with the status of the High Court to hear and determine disputes relating to the environment and use and occupation of, and title to land. Article 162(3) provides that Parliament shall determine the jurisdiction and functions of the Courts contemplated in Article 162(2).

2. It was on the basis of Article 162(2) of the Constitution that Parliament enacted the Environment and Land Court Act, No. 19 of 2011, which came into effect on 30th August 2011. The object of the Act is stated as follows:

An Act of Parliament to give effect to Article 162(2)(b) of the Constitution; to establish a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to land, and to make provision for its jurisdiction, functions and powers, and for connected purposes.

3. In Section 13, the ELC Act provides that:

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.

4. In the present case, Jane Muthoni Mugo filed a Summons for Annulment of Grant issued to the Respondent, Eunice Mweru Muita on 03/03/2016. The grant is in respect to the estate of the Deceased. The Applicant's Summons for Annulment is dated 09/04/2019.

5. The Respondent is a sister to the Deceased. She does not contest that the Applicant is a widow of the Deceased. However, she filed for the Letters of Administration because she says that the Deceased sold to her Plot No. Solai Ndungiri Block 3/879 ("Subject Parcel") when he was still alive. Fearing that the Jane Muthoni Mugo would dispossess her, she filed for Letters of Administration. The Respondent filed a substantive response to the Summons for Annulment *vide* a Replying Affidavit.

6. The parties appeared before the Learned Justice Ndung'u on 21/05/2019 and entered into a consent. The essence of the consent is that the Letters of Administration issued to Eunice Mweru Muita were revoked and, instead, Eunice was made the 1st Administrator with Jane being made the 2nd Administrator. The parties agreed to go for a hearing respecting the mode of distribution of the estate.

7. As the parties were perfecting the hearing by *viva voce* evidence as directed by the Judge, Jane filed a Notice of Preliminary Objection. Its essence is to "*have the 1st Administrator (Eunice Mweru Muita) issues raised be struck out as the Court has no jurisdiction to hear the issue of ownership, use and occupation of land as the same are enshrined (sic) in the Environment and Land Court.*"

8. The parties agreed to argue the Preliminary Objection *in limine* by way of written submissions. Each of their respective advocates filed their written submissions.

9. The facts, as stated above, are that Eunice claims that she bought the Subject parcel of land from the Deceased. She claims that she has a *bona fide* Sale Agreement. Jane disputes the sale and refers to the alleged Sale Agreement as forged. This will be the main issue to be determined by the Court if the hearing moves forward.

10. Is this a dispute over the ownership of land to which the ELC has exclusive jurisdiction? I have no doubt in my mind that it is.

Eunice's claim cannot be starker: she claims she owns the land which is registered in the name of the Deceased. She claims she bought it from the Deceased before his demise. The beneficiaries of the estate of the Deceased resist the claims and say that the Subject parcel belongs to the estate and must be available for distribution among the beneficiaries of the estate. It is obvious that Eunice is in a contest for the ownership of the parcel with the estate of the Deceased. That is a dispute over ownership of land. The jurisdiction for dealing with it lies squarely with the Environment and Land Court. This is not one of those situations when one can say that the High Court has concurrent jurisdiction because the issues presented are mixed.

11. Consequently, I must allow the Preliminary Objection. The claims by the 1st Administrator (Eunice Mweru Muita) can only be litigated in a different suit brought before the Environment and Land Court. It cannot be litigated in the present Succession Cause in the guise of a dispute over the mode of distribution over the estate of the Deceased.

12. I therefore direct either Administrators to proceed with the administration of the estate bearing in mind this ruling.

13. Orders accordingly.

Dated and delivered at Nakuru this 16th day of April, 2020

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JOEL NGUGI

JUDGE

NOTE: This ruling was delivered by email pursuant to the various Directives by the Honourable Chief Justice asking Courts to consider use of technology to deliver judgments and rulings where expedient due to the COVID-19 Pandemic. This resulted in Administrative Directives dated 01/04/2020 by the Presiding Judge, Nakuru Law Courts authorizing the delivery of judgment by email in cases where all the parties have consented to dispense with the requirements of Order 21 Rule 1 of the Civil Procedure Rules. In this case, both the Counsel for the 1st Administrator, Waiganjo & Co. Advocates and Counsel for the 2nd Administrator, Muchiri Gathecha & Co. Advocates consented in writing to the delivery of the ruling by email.