



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KERUGOYA**  
**SUCCESSION CAUSE NO. 295 OF 2012**  
**IN THE MATTER OF THE ESTATE OF LATE PATRICK MUREITHI**  
**NJOGU ALIAS PATRICK MUREITHI NJOGU (DECEASED)**  
**(Formerly EMBU Succ. Cause. No. 455 of 2009)**

PERIS WANJIRA MURIITHI.....PETITIONER

VERSUS

THOMAS NDWIGA NJOGU & 8 OTHERS.....PROTESTORS

**JUDGEMENT**

1. The matter relates to the Estate of Patrick Mureithi Njogu alias Patrick Mureithi Njogu (deceased) who died intestate on 1<sup>st</sup> January, 2009 and a grant of letter of administration was issued to Peris Wanjira Mureithi the Petitioner/ Applicant on 1<sup>st</sup> of March, 2010. She proceeded to file an application dated 22<sup>nd</sup> October, 2010. Seeking an order that a Grant be confirmed.

2. Affidavits of Protests were filed by: Thomas Ndwiga Njogu & Sospeter Gachoki Njogu claiming that the Petitioner failed to disclose crucial information relating to the assets in the Succession cause. That the deceased herein is their brother and was registered in Trust L.R. No. **Ngariama/ Thirikwa/ 481** in trust for himself and all his siblings.

3. The 9<sup>th</sup> Protestor Johnson Gichobi Wahome filed his affidavit of protest on 7<sup>th</sup> March, 2017 and he filed his witness statements and had two witnesses Mariko Njuki S Irungu and Benjamin Njagi Mugo who recorded and signed their statements and gave their evidence before court.

4. A protest was also filed by Geoffrey Muriuki Njogu claiming an interest in L.R. No. **Ngariama/ Thirikwa/1524** comprising 2 acres. That in the year 1997 he purchased a portion of land measuring 2 acres from Mariko Njuki at an agreed purchase price of Kshs; 300,000/= which he paid in full and has been in occupation since then. Mariko Njuki transferred the land to the deceased to hold the same in trust on his behalf and that he would transfer the same to him upon completion of the payment, which he completed in two installment. That Mariko had a case in Embu court which was finalized on 26<sup>th</sup> of April, 2002 and he claims 2 acres out of Land Parcel No. Ngariama/Thirikwa/ 1524 since the deceased died before the transfer was done in his favour.

5. The court gave directions that the protests be heard by way of oral evidence. The protestors' proceeded and adduced evidence.

6. On 13<sup>th</sup> December, 2018 the parties entered a consent in the following terms;-

(i) By consent the summons for confirmation of grant dated 22<sup>nd</sup> October, 2010 be confirmed as prayed with the following exceptions;

***(a) Following the confirmation the court to issue a Prohibitory order against Land Parcel No. Ngariama/ Thirikwa/481 and Ngariama / Thirikwa/ 1524 pending the hearing and determination of Kerugoya ELC No. 46 of 2018.***

***(b) For avoidance of doubts the said Parcels of land; Ngariama/ Thirikwa/ 481 and 1524 though confirmed shall not be available for distribution until ELC No. 46 of 2016 is heard and determined.***

(c) In respect to the 9<sup>th</sup> Protestor Johnson Gichobi Wahome who claims 1 acre out of Ngariama/Thirikwa/1522 the court be pleased to make a determination in respect of the rightful beneficiary based on the evidence on record.

(d) The land parcel No. Nthiwa/Riandu/2954 be registered in the name of Peris Wanjira Muriithi absolutely.

7. The issue which is for determination in this Judgment is the protest by the 9<sup>th</sup> Protestor sworn on 7<sup>th</sup> March, 2017. The Protestor's case is that, the Petitioner filed this Succession Cause without his knowledge and total disregard of his occupation and developments on 1 acre on the land parcel number Ngariama/Thirikwa/1522 comprising 2 acres.

8. That he had purchased the portion 1997 from Mariko Njuki at an agreed purchase price of Kshs; 150,000/= which he paid a total of Kshs; 143,000/= through installment leaving a balance of Kshs; 7,000/=. Mariko Njuki allowed him to take possession, and occupy 1 acre where he has been in occupation to date.

9. He claims that the deceased was his Pastor for over 15 years a fact which the said Mariko Njuki was well aware of and Mariko Njuki trusted him so much that he transferred L.R No. Ngariama/Thirikwa/1522 (deceased) to hold the same in trust in full understanding that after completion of the purchase price the deceased would transfer the 1 acre portion to him.

10. He further contends that at the same time Mariko Njuki had a case before the Chief Magistrate's court EMBU CIVIL SUIT No. 117 of 1998 against the said Land which was decided in his favour.

11. Later on 26<sup>th</sup> April, 2002 Mariko Njuki and himself formalized their terms over the said land through a written Land Sale Agreement and he prays that he be granted 1 acre portion of land Number L.R. No. Ngariama /Thirikwa/1522 since the deceased died before he transferred the same to him.

#### **Analysis and Determination:**

(i) I have considered the protest, the issue for determination is whether this court has jurisdiction to determine matters related to trust.

(ii) Whether the alleged trust have been proved to show that the deceased held parcel number Ngariama/Thirikwa/1522 in trust for himself and the objector.

12. The protestor in his affidavit of protest claimed an interest in land parcel number Ngariama/Thirikwa/1522 and his claim was that the deceased was holding his land in trust for him. The claim is therefore not based on beneficial interest on the estate of the deceased.

13. It has been submitted that the protestor has affirmed in his submission that he is claiming that the deceased was registered in trust. The claim by the Protestor is therefore based on trust.

14. The issue raised by the Petitioner is based on Jurisdiction of this court to hear and determine matters related to Trust and it is therefore a Preliminary issue which should be determined as early as possible to determine whether the court is clothed with Jurisdiction to determine a claim based on trust.

15. Jurisdiction in a matter is everything and it is trite that where a court has no jurisdiction it cannot make one more step but must down its tools. In the case of; Owners of the Motor-vessel Lilian (s) -vs- Caltex Oil Kenya Limited (1989) 1 KLR which is a Locus Classica on the Issue of Jurisdiction Nyarangi J.A stated

*“Jurisdiction is everything, without it a court has no power to make more step, a court of law downs tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction.*

*Jurisdiction is donated by statutes, and parties in a suit cannot purport to confer jurisdiction on a court when it has no jurisdiction.*

*This has been stated in the matter of advisory opinion of the Supreme court under Article 163 (3) of The Constitution, Constitutional Application no. 2 of 2011.*

*The court stated;*

*The Lilian (s) case (1989) KLR establishes that Jurisdiction flows from the Law and the recipient court is to apply the same with any limitation embodied therein, and such a court may not arrogate to itself jurisdiction through the craft of interpretation or by way of endeavors to discern or interpret the intentions of Parliament where the wording of Legislation is clear and there is no ambiguity.”*

Section 2 of the Land Registration Act 2012 a court is defined as the Environment and Land Court established by Environment and Land Act of 2011 (No. 19 of 2011) and other courts having jurisdiction on matters relating to Land.

**The Preamble to Environment and Land Court Act No. 19 of 2011**

*“An Act of Parliament to give effect to Article 162 (2) (b) of The Constitution to establish Superior Court to hear and determine disputes relating to the Environment and the use and the occupation of and title to land and to make provision for its jurisdiction, factions and powers and for connected purposes.”*

On its part **Article 162 (2) (b) of The Constitution**, it provides that;

*“ Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to - The Environment and the use and occupation of, and title to Land.”*

**The Supreme Court in Petition number 5 of 2015**

**Republic, Karisa Chengo, & Jefferson Kalama Kengha ( applicants) -vs- Kitsao Chalo Ngati ( Respondent)** - were determining whether Judges of High Court, Judges of Environment and Land Court and Judges of Labour Relations Court have jurisdiction to sit in any and/or the three Courts, stated that;

*“ the three are different and autonomous Courts and exercise different and distinct jurisdictions. Article 165 (5) Precludes the High court from entertaining matters reserved to the ELC and ELRC it should by the same token be referred that ELC and ELRC too cannot hear matters reserved for the jurisdiction of the High court.”*

16. The issue before this court is trust with the Protestor claiming that the deceased is registered in trust. This court therefore lacks jurisdiction to entertain a claim based on trust of a registered land.

**In the Estate of Njuguna Igwima Succession cause no.1905 of 2012** which is cited by the Petitioner in his submissions. The court stated that:-

*“ the issue of Customary trust raised by the protest must be hard and determined in another forum so as to inform on whether the net estate of the deceased is available for distribution to the beneficiaries includes the two suit property or half of the said property, determination can only within the purview of the Environment and Land court to decide whether the said trust does exist while looking into the substantive claim by the claimants.”*

17. The dispute before this court is under the **Law of Succession Act ( Cap 160 ) Laws of Kenya** which in its Preamble states that it is an Act of Parliament to amend, define and consolidate the Law relating to intestate and testamentary Succession and the administration of estates of deceased persons and for purposes connected therewith and incidental thereto.

18. The claim by the Protestors is based on trust. They have not claimed as dependants or direct beneficiaries of the deceased and they do not claim that they have any right to inherit any property or assets of the deceased.

19. There claim does not fit in the Succession cause filed under the Law of Succession Act.

20. There claim that the deceased held the land in question in trust for himself and the objector is a matter that is not within the Jurisdiction of this court.

21. The claim by the objector should be addressed in the proper forum with jurisdiction which is certainly not before this court. A determination of their claim in this court would be of no consequence as this court cannot make orders other than those it is empowered to do Under the Law of Succession Act. The very fact that the objector is challenging the title of the deceased, the issue should form a claim in a separate suit in a Court with jurisdiction for the court to declare whether or not there exist a trust. The objector has to proof the claim.

22. What am saying is that this is not the forum where the claim by the protestor should be determined and I agree with the Petitioner that this Court has no jurisdiction to entertain the issue raised by the objector or the protestor in the affidavit of protest.

23. Although the Protestor consented to this court determining the issue of trust by the protestor it is trite law that jurisdiction is conferred on a court by the Statue and a party cannot purport to enter a consent to give the court jurisdiction which it does not have in the first place.

24. I agree with the counsel for the Petitioner that this Court lacks jurisdiction to entertain the Protest.

25. Indeed there are other Protestors who are claiming that the deceased was registered in trust and have agreed to stay the proceedings pending a declaration in the suit they have filed in the Land and Environment Court where they were seeking a declaration that the deceased is registered in trust.

26. Just as some of the Protestors have realized that this is not the Court with Jurisdiction to declare a trust, the protestor should have followed suit.

**In conclusion I find that:**

- This court has no Jurisdiction to entertain the Protest.
- Without it I have no jurisdiction to determine the merits of the claim by the protestor which was the 2<sup>nd</sup> issue for determination.
- The Protest by Johnson Gichobi Wahome against the confirmation of grant on 7<sup>th</sup> March, 2017 is not properly before this Court.
- I therefore order that the Protest be struck out with costs.

**Dated, signed, at Kerugoya 29<sup>th</sup> this day May 2020**

**L.W. GITARI**

**JUDGE**