



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 521 OF 2013

JOSEPH NJIRAINI MURIITHI.....PLAINTIFF

VERSUS

BETH WANJIRA MURIITHI.....1ST DEFENDANT

AGNES WAKUTHII WACHIRA.....2ND DEFENDANT

ANTHONY MBITHI WACHIRA.....3RD DEFENDANT

SUSAN NJERI MUNENE.....1ST INTERESTED PARTY

MARGARET WAKIURU MURIITHI.....2ND INTERESTED PARTY

JANE KIRUNDA NJIRAINI.....3RD INTERESTED PARTY

BMN(Minor) Sued on behalf of

the mother as next friend.....4TH INTERESTED PARTY

RULING

By an application dated 12th June 2020, brought under *Order 51 Rule 1 of the Civil Procedure Act, Cap 21 laws of Kenya and Cap 160 Law of Succession* and other enabling provisions of the law, the Applicant sought the following orders:-

- (1) That this Honourable Court do transfer this suit to the Chief Magistrate's Court for further directions.***
- (2) That this Court do make an order that this property is the estate of the later MUREITHI MUGERA which ought to proceed through Cap 160 laws of Succession.***
- (3) This Court lacks jurisdiction to try and determine this suit as the parties herein are beneficiaries fighting for their shares of the estate.***
- (4) That costs of this application be provided for.***

The following are grounds under which the application is based:-

- (a) That I was issued with limited Grant on 26th July 2018 to replace my late mother the 1st interested party.
- (b) That all along, my mother had been following her share of the estate from her late father.
- (c) That all the parties involved herein are beneficiaries of the estate of the late MUREITHI MUGERA apart from the 3rd and 4th defendants who purchased part of the estate unknowingly.
- (d) That the 1st and 2nd defendants are my aunts and the plaintiff is my uncle while the 2nd, 3rd and 4th interested parties are my first cousins.

Applicant's Factual Statement

The applicant has filed a supporting affidavit and deposed as hereunder:-

- (i) That he is one of the beneficiaries of the Estate of Mureithi Mugeru by virtue of being the son of the late Margaret Wakiuru Mureithi who was the elder daughter of Mureithi Mugeru and the 1st interested party herein.
- (ii) That he substituted his late mother in this suit after she passed on. He attached a copy of a limited grant.
- (iii) That his other late sisters were buried in the estate of their grandfather on the portion which was allocated to their late mother.
- (iv) That his late mother was also buried in one of the properties comprising the Estate of Mureithi Mugeru at a village plot at Kiamaina.
- (v) That the plaintiff who is his uncle secretly transferred the estate to himself without the knowledge of his mother and other aunts.
- (vi) That the dispute in this suit is the denied right of inheritance of the estate of Mureithi Mugeru to his late mother and aunts by their uncle the plaintiff/Respondent herein.
- (vii) That the action of their uncle is causing a lot of friction in the entire family of their late grandfather Mureithi Mugeru.
- (viii) That the dispute of this estate had been taken to the Land Disputes Tribunal and the findings there were that this was the estate of the late Mureithi Mugeru and the orders given thereto were in favour of their aunts the 1st and 2nd defendants as they were beneficiaries of the Estate and part of the Estate was transferred to them.
- (ix) That the High Court in Embu in its explanation had observed that the dispute herein was the estate of the late Mureithi Mugeru and the plaintiff was advised so but ignored this advice.
- (x) That the plaintiff has chased them from the portion of the Estate assigned to his late mother by their late grandfather and has desecrated the graves of their late sisters by flattening them.
- (xi) That after the tribunal verdict, their aunts were given their portions leaving out his late mother who was and is a beneficiary of the estate.
- (xii) That the plaintiff is hiding behind the plots given to his aunts and later sold them to the 3rd and 4th defendants while he himself has disposed part of the estate to other people and failed to disclose this to this Honourable Court.
- (xiii) That the dispute before this Court is not about land parcel No. MUTIRA/KIRUNDA/1481 and MUTIRA/KIRUNDA/1476 but the Estate of the late MUREITHI MUGERA land Ref. No. MUTIRA/KIRUNDA/85 which upon sub-division gave rise to the two portions.
- (xiv) That apart from the 1st and 2nd defendants who are his aunts, there are others who were given a portion of the Estate leaving his mother out of the Estate completely.
- (xv) That his late mother had her own portion at his grandfather's estate where she had planted coffee bushes and was a member of Mutira Farmers Co-operative Society.
- (xvi) That his late mother was an active member of Mutira Farmers Society where she sold her coffee berries.
- (xvii) That the Factory Manager has even confirmed that her mother was a member of Mutira Farmers Co-operative Society Ltd vide a letter dated 26/5/2020.

Respondents Statement of Facts

The respondents filed a replying affidavit sworn by the 1st respondent on 23rd September 2020 and deposed as follows:-

- (i) That the said application lacks merit and is misconceived and should be dismissed with costs.
- (ii) That there is no way the cause of action herein can be said to be a succession matter.
- (iii) That by the time MURIITHI MUGERA (our father) died in 2013, all the resultant sub-divisions of L.R. MUTIRA/KIRUNDA/85 were all registered in the names of the plaintiff who is still alive.
- (iv) That all the 16 sub-divisions of the original suit land were registered in the name of the plaintiff on 30th August 2004.

(v) That there is nowhere in the ruling of Justice H. ONG'UDI dated 20th December 2012 indicated that the cause of action herein is one under the law of Succession Act Cap. 160.

(vi) That the said application be dismissed with costs.

(vii) The application has not demonstrated any evidence to show that the suit land are registered in the names of the late MURIITHI MUGERA.

(viii) That without prejudice, the pecuniary jurisdiction of the Magistrate Court is less than the value of the suit land since there are sixteen portions and one portion has an open market price of over Ksh. 2 million.

Legal Analysis

I have considered the Notice of Motion dated 12th June 2020, the supporting affidavit and the annexures thereto. I have also considered the replying affidavits by the respondents and the plaintiff together with the written submissions by counsels. I have equally considered the applicable law. It is not in dispute that the plaintiff commenced this suit by a plaint dated 21st October 2011 seeking inter alia an order for declaration that the tribunal award and the adoption of the same by the Kerugoya Court was unlawful and cancellation of titles of land parcels No. MUTIRA/KIRUNDA/1476 and 1481 from the 3rd defendant and registration of the same in favour of the plaintiff. The plaintiff also sought a permanent injunction against the defendants from interfering with the plaintiff's quiet possession and occupation, cultivation and enjoyment of the two parcels of land No. MUTIRA/KIRUNDA/1476 and 1481. The jurisdiction of this Honourable Court was not denied by the defendant who besides admitting the jurisdiction also filed a statement of defence and counter-claim.

By a Notice of Motion dated 29th May 2015, the interested party was enjoined as a party to these proceedings vide a ruling dated 26th February 2016. The applicant has not filed defence to the plaintiff's claim and neither has he denied the jurisdiction of this Honourable Court. Jurisdiction flows either from statute or the Constitution. The jurisdiction of this Court emanates from **Article 162 (2) (b) and Section 13 of the Environment and Land Court Act No. 19 of 2011** respectively. **Section 13 (1) & (2) of the Environment and Land Court** provides as follows:-

“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 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 environment 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 interest in land; and

(e) any other dispute relating to environment and land.....”

The claim by the plaintiff is a dispute falling squarely within the jurisdiction of the Environment and Land Court. The applicant cannot derail this Court by framing non-existent issues. The issues for determination in a suit flow from the pleadings and not the fertile imagination of parties. For the reasons I have given herein above, I find the application by the interested party dated 12th June 2020 misconceived, mischievous and lacking merit. The same is dismissed with costs. It is so ordered.

Ruling READ, DELIVERED physically and SIGNED in open Court at Kerugoya this 13th day of November 2020.

E.C. CHERONO

ELC JUDGE

In the presence of:-

1. Mr. Muriithi for the Plaintiff/Respondent
2. Ms Wambui for the 3rd and 4th Respondents
3. Interested party/Applicant/Advocate – absent

4. *1st and 2nd Defendants/Respondents – absent*

5. *Mbogo, Court clerk – present.*