



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MAKUENI

ELC CASE NO.84 OF 2017

BENJAMIN MWANZIA WAMBUA

(Suing as legal representative to the Estate of

Mukui Wambua MaingiPLAINTIFF

-VERSUS-

STEPHEN KIMEU KIMANGA.....DEFENDANT

R U L I N G

1. What is before this court for ruling is the Defendant's Notice of Preliminary Objection dated 29th May, 2020 and filed in court on 10th June, 2020. He seeks to have the Plaintiff's suit herein to be struck or dismissed with costs on the grounds that:-

1. Ground No. 1 – *The plaint and suit are incompetent, bad in law and void ab initio as the Plaintiff lacks valid or legal capacity to sue in this suit in so far as he holds no valid letters of administration/grant in respect of estate of Mukui Wambua Maingi in so far as his Ad Litem Grant issued in **High Court Succession Cause No. 1073 of 2012** was issued and limited only for purposes of **Minister's Land Appeal No. 1778 of 1986**, has since lapsed for determination thereof and is not valid for purposes of this suit.*

2. Ground No. 2 – *The suit is Res Judicata by reason of a final judgment of a competent court of law in **Uaani DMCC No. L 47 of 1974** and subsequent decisions in the disputation process under the Land Adjudication Act, Cap 284, culminating in the final unchallengeable decision of the Minister dated 23/7/2017 in **Minister's Land Appeal No. 1778 of 1986**.*

3. Ground No. 3 (a) – *This court has no jurisdiction over ownership of parcel No. Kiteta/Ngiluni/1610 by reason of provisions of Sections 20 and 30 of the Land Adjudication Act, Cap 284 Laws of Kenya, in so far as the Minister's decision in **Land Appeal No. 1778 of 1986** dated 23/2/2017 is final in all respects and not challengeable in any court of law. (NB: Correct date is 23/3/2017).*

Ground No. 3 (b) – *In so far as the cause is not an application for Judicial Review before the High Court under Order 53 of the Civil Procedure Rules this Honourable Court cannot sit over a question of Title already determined on an Appeal to the Minister under Section 29 of the Land Adjudication Act in light of the **Minister's Land Appeal No. 1778 of 1986**.*

4. Ground No. 4 – *In so far as parcel No. Kiteta/Ngiluni/1601 is a First Registration Title as at 6/5/2002 under Sections 27, 28 and 143 of the then applicable Registered Land Act, Cap 300 Laws of Kenya, the title is indefeasible and unchallengeable in any court. The title as registered is absolute and not subject to any trust or third party claims as determined in the disputation process from **Uaani DMCC No. L 47 of 1974** through the Adjudication process culminating with decision of 23/2/2017 in **Minister's Land Appeal No. 1778 of 1986** (NB: correct date is 23/3/2017).*

2. The Preliminary Objection was canvassed by way of written submissions and by the time of writing this ruling, it is only the Defendant's counsel who had filed his submissions.

3. In his submissions the counsel for the Defendant submitted that the plaint and the suit are incompetent, bad in law and void and *ab initio* for lack of a valid legal capacity and competence to sue on behalf of the estate of the deceased Mukui Wambua Maingi in that the Plaintiff has no valid letters of administration. The counsel added that the Plaintiff is neither the personal/legal representative nor administrator and cannot sue in respect of Kiteta/Ngiluni/1601 for his benefit and that of the other dependants of the estate. It was also the counsel's submissions that the Limited Grant *ad litem* issued in **Machakos High Court Succession Cause No. 1073 of 2012** was strictly limited for the purpose of proceeding with **Land Asset Case No. 1778 of 1986** which was pending before the Minister. That in order to file this suit, the Plaintiff needed a fresh Grant of Letters Of Administration *ad litem* (*Emphasis is mine*)

4. The counsel extensively quoted the provisions of the Law of Succession Act Cap 160 of the Laws of Kenya and Order 31 Rules 1 and 2 of the Civil Procedure Rules which provide the legal principles on suits by or against Administrators (personal or legal representatives).

5. It was also the counsel's submissions that the suit is *res judicata* by reasons of a final judgment of a competent court of law in **Uaani DMCC No. L 47 of 1974** and subsequent decisions in the dispute process under the Land Adjudication Act, Cap 284 culminating in the unchallengeable decision of the Minister dated 23rd July, 2017 in the **Minister's Land Appeal No. 1778 of 1986**.

6. The counsel cited Section 7 of the Civil Procedure Act, Chapter 21 of the Laws of Kenya which provides as follows:-

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim litigating under the same title in a court competent to try such subsequent suit of the suit in which such issue has been subsequently raised and has been heard and finally decided by such court.”

7. Arising from the above, the counsel submitted that the Plaintiff herein is one Wambua Maingi who was the Defendant in Uaani DMCC No. L 47 of 1974 while Samuel Votoi objected to the sale of the suit land to the current Defendant.

8. The Defendant further contend that this court lacks jurisdiction over ownership of land parcel number Kiteta/Ngiluni/1610 by virtue of Sections 29 and 30 of the Land Adjudication Act, Chapter 284 of the laws of Kenya the Minister's decision rendered on 23rd March, 2017 became final and could only be challenged by way of a Judicial Review Application at the High Court and not this court. As such, the counsel was of the view that on basis of the owners of motor vessel **“Lillian S” -Vs- Caltex Oil (Kenya) Ltd (1988) KLR**, this court should lay down its tools.

9. The counsel for the Defendant further submitted that the title for land parcel numbers Kiteta/Ngiluni/1601 being a first registration issued on 6th May, 2002 under Sections 27, 28 and 143 of the then applicable Registered Land Act, Chapter 300 of the Laws of Kenya, it remains indefeasible and unchallengeable in any court. The counsel added that the claims of trust and fraud in the plaint are invalid and incompetent since all matters concerning the above grounds were fully investigated under the adjudication process.

10. Having read the application and the submissions filed by the Defendant's counsel, my finding is as follows:-

- Firstly, it is not in dispute that the Limited Grant of Letters of Administration *ad litem* issued on the 22nd October, 2012 and which the Plaintiff herein has relied upon to file this suit was strictly limited to the proceedings in Land Appeal Case No. 1778 of 1986 before the Minister. As was correctly submitted by the Defendant's counsel, the Plaintiff herein needed a fresh grant of Letters of Administration *ad litem* before filing this suit. Thus in my view, the suit herein is incompetent, bad in law and void also *ab initio* as the Plaintiff lacks capacity to sue.
- Secondly, it has not been controverted that the issue in dispute herein was substantially in issue in Uaani DMCC No. L 47 of 1974 between the same parties. No appeal was preferred against the said decision. It will be noted that the parties are related to the parties who were involved in the L 47 of 1974. In my view therefore, the matter is *res judicata*.
- Thirdly, the issue of ownership regarding land parcel number Kiteta/Ngiluni/1610 was determined in the Minister's decision in **Land Appeal No. 1778 of 1986** dated 23rd February 2017. The Minister's decision is final by virtue of Sections 29 and 30 of the Land Adjudication Act. The minister's decision can only be challenged in this court by way of judicial review and not in the High Court contrary to the submissions by the Defendant's counsel.

11. The upshot of the foregoing is that the Notice of Preliminary Objection by the Defendant dated 29th May, 2020 has merits. In the circumstances, the Plaintiff's suit filed in court on 12th April, 2017 vide the plaint dated 7th April, 2017 is struck out with costs to the Defendant.

Signed, dated and delivered at Makueni via email this **09th day of December, 2020**.

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MBOGO C.G.,

JUDGE.

Court Assistant: Mr. G. Kwemboi