



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERICHO

ELC NO. 45 OF 2018

LORNA CHELANGAT MARINDANY.....PLAINTIFF

VERSUS

RECHO CHEPNGETICH SOL.....DEFENDANT

RULING

Introduction

1. The Plaintiff instituted this suit against the Defendant seeking the following reliefs:

- a) *An order for the sub-division of land parcel number KERICHO/RORET/1974 into two portions; one portion measuring 11.5 hectares to be registered in the name of the Plaintiff and the other portion measuring 4.99 hectares in the name of the Defendant.*
- b) *An order compelling the defendant to make available the original title deed and execute all the requisite documents required in order to effect the sub-division of the suit property, in default the Deputy Registrar of this Honourable Court to execute the necessary documents.*
- c) *That the costs of the sub-division to be shared equally between the Plaintiff and Defendant.*
- d) *The costs of this suit.*
- e) *Any other relief the Court may deem fit and just to grant.*

2. The Defendant subsequently filed a Defence and raised a Preliminary objection on the following grounds:

- i. *That this Honourable Court lacks the requisite jurisdiction to entertain this matter for the reasons that the suit seeks to set aside the orders of the Succession Court which is a Court of concurrent jurisdiction*
- ii. *That the suit herein discloses no cause of action against the Defendant*
- iii. *That the suit is otherwise an abuse of the court process*

Facts in Brief

3. Before delving into the Preliminary objection it is important to give a brief summary of the facts of this as discerned from the pleadings. The Plaintiff and the Defendant are joint administrators of the estate of Mathew Kiptanui Soi (deceased). The grant was confirmed on 16th September, 2013. According to the Certificate of confirmation of grant, the properties of the deceased are to be held in trust by the administrators for the benefit of rightful beneficiaries of the deceased. Subsequent to the confirmation of Grant both the Plaintiff and the Defendant have sold varying portions of the deceased's property known as land parcel no. Kericho/Roret/620 which originally measured 22.9 hectares and divided it into two parcels being Kericho/Roret 1876 and Kericho/Roret 1877. Parcel no 1877 was transferred to Everseasons Ltd while parcel no 1876 was further sub-divided into four portions namely Kericho/ Roret/1974, 1975 1976 and 1977. Land Parcels no. Kericho/Roret/1975, 1976 and 1977 were sold to third parties while the remaining parcel no. Kericho/Roret/1974 which is the subject of this suit is jointly registered in the names of the Plaintiff and the Defendant and held in trust for the beneficiaries of the deceased.

4. The Plaintiff has filed suit seeking to have the said parcel sub-divided between her and the Defendant. The Defendant is opposed to the

sub-division of the suit property by this honourable court as she is of the view that the said sub-division would amount to re-distributing the estate which is the mandate of the High Court and not the Environment and Land Court.

5. The court directed that the Preliminary Objection be canvassed by way of written submissions and both parties field their submissions which I have considered.

Issue for Determination

6. The singular issue for determination is whether this court has the jurisdiction to determine this suit.

Analysis and Determination

7. It is trite law that jurisdiction is a fundamental point of law which must be determined at the earliest possible opportunity as without it, the court would not be able to hear the matter. In the celebrated case of **The Owners of Motor Vessel Lillian "S" V Caltex Oil Kenya Limited 1989 KLR 1653** the Court of Appeal held as follows:

“Jurisdiction is everything, without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it has no jurisdiction”

8. The jurisdiction of the Environment and Land Court is set out in Article 162 (2) (b) of the Constitution which provides as follows:

“162. (2) Parliament shall establish courts with the status of the High court to hear and determined disputes relating to

a) employment and labour relations

b) the environment and the use, occupation of and title to land”

9. The Environment and Land Court has original jurisdiction to hear and determine matters touching on land and environment. Under section 13 (2) of the Land and Environment Act In exercise of its jurisdiction under article 162 (2) (b) of the Constitution the court shall have power to hear and determine disputes relating to environment and land including disputes;

a) Relating to environmental planning and protection, trade, climate issues, land use planning, title tenure, boundaries, rates, rent, valuation, 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 land and environment

10. Additionally, under section 13 (3) nothing in this Act shall preclude the court from hearing and determining applications for redress of a denial or violation or infringement of or threat to rights or fundamental freedoms relating to the environment and land under article 42,69 and 70 of the Constitution.

11. Under section 13(7) the court has power to make any order and grant such relief as the court deems fit and just including:

a) Interim and permanent preservation orders including injunctions;

b) Prerogative orders;

c) Award of damages;

d) Compensation;

e) Specific performance;

f) Restitution;

g) Declaration or

h) costs

12. In order to determine whether this court has the jurisdiction to hear and determine this suit, I must satisfy myself that the suit falls within the parameters outlined in the above provisions.

13. Counsel for the Plaintiff submitted that the suit falls within the jurisdiction of this court in terms of Article 162 (2) (b) as read with sections 2 (a), (d) and 7 (h) of the Environment and Land Court Act.

14. On the other hand, it is the submission of the Defendant 's counsel that this suit falls within the jurisdiction of the High Court as it seeks to alter the orders of the High Court in Kericho HC Succession Cause No. 56 of 2010 in which the Certificate of Confirmation of Grant was issued. The said Grant indicates that the Plaintiff and the Defendant are to hold the deceased's property in trust for the beneficiaries. Counsel has cited the case of **In re Estate of John Maraga Gwako –Deceased (2017) eKLR** where the court held as follows:

“It (suit property) was transferred to the widow of the deceased in life interest and in trust for the children of the deceased 4 sons and 7 daughters, half of whom were minors at the time; in determined shares. It is within the purview of Family Court to ensure transmission of beneficial interest from the deceased's estate to the deceased's beneficiaries.”

15. The court further stated as follows:

“Clearly, from the above facts set out, the Court has jurisdiction to facilitate the beneficial interest of the said property(ies) to the beneficiaries. The Applicants herein are children of the deceased and beneficiaries of his estate and if they lodge an application seeking their rightful beneficial share from the deceased's estate, it is within their right and this Court ought to exercise its jurisdiction to hear and determine the application in form of revocation of grant. Suffice is to state that the Court has jurisdiction to determine the beneficiaries rightful share of the deceased's estate.”

16. Even though the above decision relates to an application for revocation of Grant, the facts bear some similarity to the suit herein. The instant suit is not merely about the use, occupation of and title to land but it involves the manner of distribution of the suit property among the administrators and other beneficiaries of Mathew Kiptanui Soi –deceased. The proposed mode of distribution seeks to vary the manner of distribution proposed in the Certificate of Confirmation of Grant issued on 16.9.2013 by the High Court in Kericho HC Succession Cause no. 56 of 2010 by proposing that the suit property be divided between the Plaintiff and the Defendant who are the administrators of their late husband's estate. From the issues raised in the pleadings, it may also be necessary for the Plaintiff and the Defendant to render accounts and complete the administration of the estate in accordance with section 83 of the Law of Succession Act. That being the position, this is not the right forum for determining the issues raised in this suit.

17. In view of the foregoing, I find and hold that this court has no jurisdiction to hear and determine this suit. Consequently, the Preliminary Objection is upheld and the suit is hereby struck out.

18. As the suit involves members of the same family, each party shall bear their own costs.

Dated, signed and delivered at Kericho this 14th day of June, 2019.

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J. M. ONYANGO

JUDGE

In the presence of:

1. Miss S. Koech for the Plaintiff
2. Mr. Langat for the Defendant
3. Court Assistant – Rotich