



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MERU

ELC SUIT NO. 57 OF 2016

STANLEY M'ITHIRUA.....PLAINTIFF

VERSUS

M'KIRIGUA M'THIRUA1ST DEFENDANT

DISTRICT LAND REGISTRAR,

MERU CENTRAL DISTRICT2ND DEFENDANT

DISTRICT LAND REGISTRAR,

MERU NORTH DISTRICT3RD DEFENDANT

HON. ATTORNEY GENERAL4TH DEFENDANT

RULING

1. This ruling is in respect of the Preliminary Objection dated 31:10:16 filed by 1st Defendant. It is averred that the Plaintiff has no capacity to bring this suit in view of the provisions of the law of Succession Act and that the claim is bad in law.

2. On 31:10:17, directions were given by the Court for the Preliminary Objection to be canvassed by way of Written Submissions.

3. The Plaintiff and the 1st Defendant have duly filed their Submissions.

ARGUMENTS OF THE 1ST DEFENDANT

4. 1st Defendant has submitted that Plaintiff's claim is that the suit property forms part of the estate of the deceased and hence the law applicable is the law of Succession Act. It is further averred that High Court (family Division) is the Court with jurisdiction to determine the matter.

5. 1st Defendant also submits that Plaintiff has not demonstrated that he is the deceased's legal representative and hence the suit offends the provisions of Section 82 of the law of Succession Act. To this end, 1st Defendant has cited the case of *Troustik Union International and Another Vs Alice Mbevu and Another Civil Appeal No 145 of 1990*.

PLAINTIFF'S ARGUMENTS

6. Plaintiff avers that he is a brother of 1st Defendant. They have another brother known as Bernard Sungura. It is submitted for the Plaintiff that their father M'Thirua Nkango owned the Parcels of Land Timau /Settlement Scheme/ 73, measuring 46 acres, Parcel No. 2716 at Kianjai in Tigania West District and a Plot No. 104 Ngushishi in Meru. Their father died in 1978. What Plaintiff avers is that 1st Defendant illegally and fraudulently transferred the suit premises to himself.

7. Plaintiff avers that this Court has jurisdiction to hear the matter.

DETERMINATION

8. I am in agreement with the averment by the 1st defendant that the law applicable in respect of the property of a deceased person is the Law of Succession Act.

9. The question is, is the suit land the property of the deceased?.

10. For the parcel No. Timau/Settlement.73, the official search indicates that 1st Defendants is the registered owner of the land. This hence is not property of a deceased person going by what is on record.

11. For the property Parcel No 2716 Kianjai and Plot No. 104 Ngushishi, the Court is not able to ascertain as to who is the current owner as the documents available are not certain on the issue.

12. Plaintiff's claim is anchored on trust, that 1st Defendant holds the suit properties in trust for his family (Plaintiff and another brother).

13. The issues at hand invite arguments. The Preliminary Objection is not a pure point of law. The same is dismissed with costs to Plaintiff.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 21st FEBRUARY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Rimita for plaintiff present

Lucy Gitonga for 1st defendant

Kiongo for 2nd, 3rd & 4th defendants present

HON. L. N. MBUGUA

ELC JUDGE