



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 502 OF 2017

FRANCIS NGANGA MUNDIA PLAINTIFF

VERSUS

ISAAC GATHUNGU WANJOHI.....1ST DEFENDANT

JACKSON SIMEI NKARU PARTERU.....2ND DEFENDANT

SIMON MOLOMA NKARU.....3RD DEFENDANT

COUNTY LAND REGISTRAR, KAJIADO.....4TH DEFENDANT

RULING

The application for determination is the 1st Defendant's Notice of Motion dated the 19th March, 2018 brought pursuant to Order 2 rule 15(1) (a) of the Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act and Section 1 of the Environment and Land Court Act (No. 19 of 2011) Practice Directions. It seeks the following orders:

1. That this Honourable Court be pleased to strike out suit.
2. That the costs of this application and suit be borne by the Plaintiff.
3. That the 1st Defendant be at liberty to prosecute his counter claim by way of formal proof.

The application is premised on the grounds that the Plaintiff's purported certificate of title issued pursuant to Certificate of Confirmation of a grant was issued by a Court which had no jurisdiction to issue it, as the purported estate of the father of the 2nd and 3rd Defendants was worth Kshs. 67, 500,000/=. That the Court of Appeal at Kisumu in **James Ndirangu Nganga Vs Kahubia Merubha Vangela (2015) eKLR** held that where a court lacks jurisdiction to entertain a matter, all orders and subsequent proceedings are null and void. Further, in the Court of Appeal case of **Owners of the Motor Vessel Lillian S. Vs Caltex Oil (K) Ltd (1989) KLR 1**, and by the **Supreme Court in Samuel Kamau Macharia & Another Vs Kenya Commercial Bank Limited & 2 others (2012) eKLR**, it stated that where the Court has no jurisdiction, it must down its tools. Further, in the High Court at Meru in **Marystella Gakii Mutegi Vs Mercy Kagige Kamunde & 8 others (2015) eKLR**, a Magistrate's court has no jurisdiction over an estate whose value is over Kshs. 100,000/=. The suit is founded on an illegal title deed.

Parties submitted on the application on 19th March, 2018 which submissions I have considered.

Analysis and Determination

Upon perusal of the application dated the 19th March, 2018 including the submissions from the parties, the only issue for determination is whether the Plaintiff should be struck out.

Order 2 rule 15 of the Civil Procedure Rules provides as follows:

- ‘(1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—**
- (a) it discloses no reasonable cause of action or defence in law; or**

I note the suit had proceeded for hearing where the Plaintiff had already testified. I note the 1st Defendant is challenging the jurisdiction of the Magistrate’s Court on issuance of a grant that led to the issuance of the Plaintiff’s title deed. It is my observation that these are issues that can only be tackled by the High Court that has jurisdiction to set aside the Grant and not at the Environment and Land Court where the ELC Act stipulates its jurisdiction at Section 13(1) as follows:

(1) 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 other law applicable in Kenya relating to environment and land.

Section 13 (2) (c) & (d) further stipulates that ' in exercise of its jurisdiction under Article 162 (2) (b) of the Constitution, the Court shall have power to hear and determine disputes - (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 interests in land'

From an interpretation of these provisions it is clear that the Environment and Land Court only has jurisdiction to deal with the aforementioned highlighted disputes but not the ones challenging issuance of grants.

Section 47 and 48 of the Law of Succession Act , in relation to the jurisdiction of the Magistrates’ Court and High Court, stipulates as follows:

‘The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient: Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.

48. (1) Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49, a magistrate shall have jurisdiction to entertain any application and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed the pecuniary limit prescribed under section 7(1) of the Magistrates' Courts Act, 2015.’

From a reading of these provisions, it is clear that any disputes or challenges relating to Grants in respect of an estate of a deceased can only be challenged in the High Court or Magistrates’ Court but not through ELC.

In the Court of Appeal in the case of **RAMJI MEGJI GUDKA LTD –Vs- ALFRED MORFAT OMUNDI MICHIRA ;& 2 OTHERS [2005]** eKLR held as follows:

“In our view, the power to strike out pleadings must be sparingly exercised. It can only be

exercised in clearest of cases. The issue of summary procedure and striking out of pleadings was given very careful consideration by this Court in DT DOBIE & COMPANY (KENYA) LTD. V. MUCHINA [1982] KLR 1 in which Madan J.A. at p. 9 said:-

“The Court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the court. At this stage, the court ought not to deal with any merits of the case for that is a function solely reserved for the judge at the trial as the court itself is not usually fully informed so as to deal with the merits “without discovery, without oral evidence tested by cross-examination in the ordinary way.” (Sellers LJ (supra). As far as possible indeed, there should be no opinions expressed upon the application which may prejudice the fair trial of the action or make it uncomfortable or restrict the freedom of the trial judge in disposing of the case in the way he thinks right.”

In dealing with the issue of triable issues, we must point out that even one triable issue would be sufficient. A Court would be entitled to strike out a defence when satisfied that the defence filed has no merit and is indeed a sham.”

I indeed concur with the authorities cited by the Applicants on the issue of jurisdiction and find that as an Environment and Land Court, I do not have jurisdiction to deal with the issue of challenging the Grant that led to the issuance of the Plaintiff’s title deed.

It is against the foregoing that I find the instant application to strike out the Plaint is not merited and dismiss it with costs.

Dated signed and delivered in open court at Kajiado this 20th day of June, 2018.

CHRISTINE OCHIENG

JUDGE