



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 141 OF 2016

IN THE MATTER OF ESTATE OF KABIRI MURITHI (DECEASED)

SUSAN KANARIO KABIRI..... PLAINTIFF

VERSUS

WILSON MBURUGU RUBARA.....1ST DEFENDANT

MARITHA MATUU MUCHENA.....2ND DEFENDANT

JULIUS MWIKUMI RUBARA.....1ST APPLICANT

FRANCIS MBAABU RUBARA.....2ND APPLICANT

RULING

1. This ruling is in respect of the preliminary objection dated 13.11.2017 and filed the same day whereby, the 2nd defendant avers that **“This court has no jurisdiction to try this suit as this is not a successions court”**. 1st respondents reply to the preliminary objection is that **“though this is not a court vested with jurisdiction to deal with succession matters, it was Justice Gikonyo who directed that the matter be heard by this honourable court, since the matters touched on issues of trust. In any case the same can be transferred back to the court which handled it from the onset, to ensure that justice is served to all the litigants herein”**.

2. The court gave directions for the preliminary objections to be canvassed by way of written submissions. This court has carefully considered the notice of preliminary objection, the pleadings, the rival submissions and I have come to the following determinations;

3. That in terms of the claims in the originating summons (filed on 24.8.2016), particularly paragraph 8 and 9 thereof, the plaintiff is seeking to have the grant issued in succession cause no. 370/2003 Meru and 227/1994 Meru High court annulled.

4. The jurisdiction of this court is provided for under article 162 (2) of the constitution where it is provided that Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to— environment and the use and occupation of, and title to, land.

5. This jurisdiction is further stipulated under section 13 of the environment and land court Act where in subsection (1), it is provided that; **“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”**. Subsection (2) provides that the in exercise of its jurisdiction, the court will have powers to hear and determine the following;

“disputes-

(a) relating to environmental 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 interests in land; and

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

6. It is quite clear that this court has no jurisdiction to determine the issues raised in the originating summons, as the same appertains to annulment of a grant.

7. The 1st defendant has stated that it is a high court Judge who referred the matter here and hence instead of dismissing the suit, the file should be re-transferred to the appropriate court to ensure that justice is served. However, I have not been told when the said orders were made, and i see no such orders in this file.

8. Nevertheless and in the interest of justice, and taking into account the provisions of article 159 (2) (b) of the Constitution, I do find that the Preliminary Objection is merited, but I hereby refer the matter to the High court for determination. No orders as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 11TH DAY OF JULY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Muchomba for 1st defendant

Miss Wambugu holding brief for E.G Mwangi for plaintiff

Mutegi for plaintiff

HON. LUCY. N. MBUGUA

ELC JUDGE