



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.154 OF 2018

MERCY WANJIRU MBURU.....PLAINTIFF

VERSUS

ELIZABETH WANJIRA EVANS & 8 OTHERS.....DEFENDANTS

RULING

(Preliminary objection contesting the locus standi of the plaintiff; objection being that she holds no letters of administration for her later father; position being that what was due to the plaintiff's later father as his inheritance, was distributed to his children in the succession matter of their father's mothers as their father was already deceased; plaintiff in this suit complaining that her other siblings are selling the land jointly awarded to them without involving her, no need for her to hold letters of administration as she is enforcing her own entitlement; preliminary objection dismissed).

1. This ruling is in respect of a preliminary objection raised by the 4th, 5th, 6th and 7th defendants but before I go into it, I find it necessary to lay down the background to this suit.

2. This suit was commenced by way of a plaint which was filed on 19 April 2018. In the plaint, the plaintiff has averred that the 4th, 5th, 6th and 7th defendants are her sisters and co-owners of the land parcels Nakuru Municipality Block 7/542, 545 and 546. They are the children of John Mburu (deceased), who was son of Rahab Wanjiru Evans (also deceased). It is pleaded that John Mburu was a beneficiary of the estate of Rahab Wanjiru Evans in the Succession Cause No. 96 of 2000 and his interest was devolved to his children as a single unit pursuant to a Court of Appeal judgment made on 18 December 2014. It is averred that through this judgment, the family of John Mburu was awarded the three properties in issue, being the land parcels Nakuru Municipality Block 7/542, 545 and 546 (hereinafter referred to as "the suit properties"). It is contended that despite this, the defendants have caused the transfer of the land parcel No. 542 to Menengai Oil Refineries, the 8th defendant, and are on the verge of transferring the other two properties, parcels No. 545 and 546, to the 9th defendant, who has already taken up possession and is in the process of developing the same. It is contended that these transactions are fraudulent, inter alia, because the sale is being done without the knowledge of the plaintiff and without remitting the proceeds of sale. In the suit, the plaintiff has sought the following orders :-

(a) A declaration that the plaintiff is the beneficial co-owner of the suit properties;

(b) An order cancelling the title of the 8th defendant.

(c) An order compelling the defendants to deliver vacant possession of the suit properties.

(d) Costs of the suit.

(e) Any other orders deemed fit and just to grant.

3. Alongside the suit, the plaintiff filed an application for injunction seeking to restrain any further dealings over the suit properties. The 4th, 5th, 6th and 7th defendants filed a replying affidavit to the said motion and also filed this preliminary objection which is drawn as follows :-

(i) That the plaintiff seeks to enforce rights to property and or rights in respect of a chose in action accruing to the estate of the late John Mburu and as against third parties.

(ii) That the plaintiff is not the holder of either a full grant of letters of administration or letters of administration limited for purposes of filing the present suit.

(iii) That on the basis of the foregoing, the plaintiff has no locus standi to file and prosecute the present suit in so far as it relates to third parties. This suit ought to be struck out with costs.

(iv) That part of the claim relates to the distribution and sharing of the proceeds of sale of the properties which form part of the estate of the late John Mburu. The distribution of the net intestate estate falls within the domain of the High Court family division. To that extent this court has no jurisdiction to try and dispose of this matter.

(v) That this suit ought to be dismissed with costs to the defendants.

4. In the replying affidavit to the application for injunction, it is deposed inter alia by the 7th defendant, that the plaintiff is seeking to enforce property and property rights accruing to the estate of John Mburu which can only be done by the administrator of the estate or executor of his will hence the plaintiff lacks locus standi. She has also disputed the claim that the plaintiff is daughter of John Mburu and has averred that the children of John Mburu, who did not include the plaintiff, applied to be enjoined in the succession cause of Rahab Wanjiru Evans which is Succession Cause No. 96 of 2000. She has deposed that the plaintiff only sneaked her name in the Court of Appeal to try and benefit from a windfall and that her mother never appeared as wife of the late John Mburu. She has deposed that the three suit properties were bequeathed to the estate of John Mburu and that they appointed their mother, one Jane Wanjiku, to be handling all transactions. She has stated that the family of John Mburu, agreed that they would freely give one of the properties to the 9th defendant as a gift to church and sell one property to enable their mother build her residence. Consequently, they gifted the land parcel No. 546 to the 9th defendant and sold the land parcel No. 542 to the 8th defendant. It is said that all these decisions were taken as part of the administration of the estate of the late John Mburu. She has deposed that the plaintiff raised the issue of herself being daughter of John Mburu, and they therefore reserved one of the properties, parcel No. 545, as contingency pending the determination of the status of the plaintiff. It is said that the title to this property is with their advocates.

5. On the part of the 8th defendant, a replying affidavit to the application for injunction was filed, vide which the 8th defendant averred that it purchased the land parcel No. 542 through a sale agreement executed on 12 April 2016 by the 4th, 5th, 6th and 7th defendants. The lease was then transferred to the 8th defendant on 4 August 2016.

6. I invited counsel to file written submissions on the preliminary objection which was done. I have considered these submissions in arriving at my decision.

7. My own assessment of the preliminary objection is that it raises two issues. First, is the claim that the plaintiff has no locus standi to present this suit as she is not the administrator of the estate of John Mburu, and secondly, is the contention that the matters herein are matters relating to the distribution of the estate of John Mburu, for which the court with jurisdiction is the Family Division of the High Court and not this court.

8. Central to this dispute is the decision of the Court of Appeal, in Civil Appeal No. 222 of 2009 which related to the distribution of the estate of Rahab Wanjiru Evans. In that judgment, which was delivered on 18 December 2014, with regard to the properties in dispute, these were distributed to the children of Mburu Gichigi (John Mburu) and who were identified in the suit to be Elizabeth Wambui Mburu (4th defendant), Salome Njoki Mburu (6th defendant), Margaret Wanjiru Mburu (7th defendant), Mary Nyambura Mburu (5th defendant) and Mercy (Mary) Wanjiru Mburu (plaintiff). As far as I can see, the Court of Appeal distributed these properties directly to the children of John Mburu as he was already deceased and there was nothing that was left which could be said to now form part of the estate of the late John Mburu. In other words, it is not necessary for there to be a succession cause in respect of the estate of John Mburu, for these properties were already distributed by the Court of appeal to his children. Having been so distributed, these properties now become the properties of the children of the late John Mburu by way of transmission and cannot be said to form part of the estate of John Mburu. It follows that the plaintiff has presented this suit on account of properties that were directly distributed to her and not on account of properties that form part of the estate of John Mburu. It is therefore not necessary for her to have a grant of letters of administration in respect of the estate of John Mburu. I therefore see no substance in the argument that the plaintiff lacks locus standi for the reason that she holds no grant of letters of administration over the estate of John Mburu. She has not filed this suit for the benefit of the Estate of John Mburu but for her own benefit.

9. On the question whether the issue in this case relates to the distribution of the estate of John Mburu, my simple answer is that it does not relate to the distribution of his estate. The issue in this suit is whether or not the 4th, 5th, 6th and 7th defendants were entitled to sell land that was transmitted jointly to them and to the plaintiff, without informing the plaintiff. It has nothing to do with the manner of distribution of the estate of the late John Mburu. It is therefore not a succession case but a case that relates to ownership and title to land. This suit therefore falls squarely within the jurisdiction of the Environment and Land Court and not the Family Division of the High Court.

10. Following my above discourse, it will be seen that I see no merit in the preliminary objection. The same is hereby dismissed with costs to the plaintiff.

11. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 11th day of October 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :-

Ms. Ogange holding brief for Mr. Mutembei for the plaintiff.

Mr. Maina holding brief for Mr. Geke for 1st defendant and holding brief for Mr. Githui for the 4th - 7th defendants and holding brief for Mr. Opondo for the 8th defendant .

No appearance on the part of M/s Ochweri Ngamate & Co. for the 2nd and 3rd defendants .

No appearance on the part of the 9th defendant who has not entered appearance.

Court Assistant :Nelima Janepher

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU