



REPUBLIC OF KENYA



**Issaq v Jama & 2 others (Environment & Land Case E072 of 2021)
[2024] KEELC 3286 (KLR) (23 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 3286 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E072 OF 2021**

**MD MWANGI, J
JANUARY 23, 2024**

BETWEEN

MOHAMED SULEYMAN ISSAQ PLAINTIFF

AND

FATUMA BAHSAN AHMED JAMA 1ST DEFENDANT

LAND REGISTRAR NAIROBI 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

RULING

(In regard to the application dated 17th April, 2023 brought under the provisions of order 24 rule 3(1) amongst the other cited provisions of the Law)

1. The Application before the Court is by one Mohammed Sheikh Abdullahi, who describes himself as the administrator/personal representative of the estate of Mohamed Suleyman Issaq (deceased), who was the Plaintiff in this case. The Applicant prays that he be substituted as the Plaintiff in this case in place of the deceased Plaintiff. He states that the Plaintiff died on 20th July, 2022, while this suit was pending before this Court. The Applicant averred that he was issued letters of administration intestate in the estate of the deceased Plaintiff by the Kadhi's Court in Nairobi.
2. The application was however opposed by the 1st Defendant, who was a wife of the deceased Plaintiff. She filed a replying affidavit which she swore on 8th May, 2023. In the said replying affidavit, the 1st Defendant termed the application by the Applicant frivolous, misguided, baseless and without merit.
3. The 1st Defendant asserted that she was the wife of the deceased Plaintiff. Although she had initiated divorce proceedings against the Plaintiff, the proceedings had not been concluded at the time of his death. She was therefore, for purposes of the Law of Succession, a dependant of the deceased. She



asserted that the Applicant on the other hand was merely a brother of the deceased therefore a busy body just out to enrich himself from the estate of the deceased.

4. It was the 1st Defendant's position that she had moved to revoke the grant issued to the Applicant herein in the Kadhi's Court on the basis that it had been obtained fraudulently. She therefore argued that it would defeat the cause of justice if the Applicant was substituted as the Plaintiff in this case before the application for revocation was heard before the Kadhi's Court.
5. In a supplementary affidavit sworn on 8th June, 2023, the Applicant herein affirmed that he was a lawful heir of the estate of his deceased brother and was the right person to be substituted in his place in this suit.
6. After parties had filed their submissions, they mutually agreed to await the outcome of the application for revocation of grant filed before the Kadhi's Court by the 1st Defendant.
7. On 25th September, 2023, the parties informed the Court that the Kadhi's Court had instead of revoking the grant issued to the Applicant, it had made the 1st Defendant and the Applicant Joint Administrators of the estate of the deceased plaintiff. Parties sought leave of the court to file supplementary submissions in view of the new development which leave was granted.
8. The Applicant in his supplementary submissions has rightly submitted on joint administration of an estate of a deceased person under the provisions of Section 82 and 83 of the Law of Succession Act. The Joint Administrators are obligated to act jointly.
9. In this case therefore, the joint administrators should be substituted for the deceased Plaintiff. The Applicant however points out the unique circumstances of this case since the case was against the 1st Defendant who is now one of the administrators in the estate of the deceased Plaintiff. The Applicant therefore submits that he should, alone, be substituted to represent the estate of the deceased Plaintiff in this suit.
10. In her rejoinder, the Plaintiff insists that the law is clear that joint administrators must act jointly. She has cited a number of authorities to support her position. She particularly relied on the decision in the case of *Simon Kamau Mubindi suing as the Administrator of the Estate of Esther Nyokabi Mubindi – vs- Monica Wambui Ngugi & another* [2014] eKLR where the Court cited with approval the decision of Musyoka J in *Re the Estate of Thiongo Ngaruiya Muthiora (Deceased)* where he pronounced the powers of an administrator(s) as follows:

“... He is the person to be sued by third parties over the Estate or to sue such third parties to protect the Estate. He is the person with the power to enter into contracts on behalf of the estate and to enforce contracts that exist between the Estate and third parties. He has the power to sell assets, to convert them into money, to invest funds, to compromise suits on behalf of the estate among others. He has the powers, given to him by Section 79 and 82 of the Law of Succession Act, Cap 167 Laws of Kenya.”

11. Where more than one administrator has been appointed, the Court citing a decision by Majanja, J in Misc. Civil No. 103B of 2013 (*Republic -vs- Nairobi City Council*) held that they must act jointly at all times. In the above cited decision, Majanja J held that:

“...The Capacity to agitate any suit on behalf of the estate of the deceased inheres in the administrators duly appointed by the court. They act jointly at all times. One administrator



out of the others lacks the capacity to bind the estate or any of the administrators or file suit alone on behalf of the estate.”

12. In the case of *Michael Chole Lugalia (sing as administrator of the Estate of Ezekiel Majani Lugalia – vs Jonathan Ligare Ayod* [2016], eKLR, the Court affirmed the above position and held that since the Plaintiff was only one of the administrators with 3 others, he could not bring a suit to enforce rights due to the estate alone without involving the other administrators. He had no capacity to bring the suit on behalf of the estate of the deceased.
13. In this case, it is common ground that the Applicant and the 1st Defendant herein have been jointly appointed as the administrators of the Estate of the deceased Plaintiff.
14. I agree with the legal position as espoused by Musyoka J and Majanja J in the case of *Simon Kamau Mubindi (Supra)* and in *Republic –vs- Nairobi City Council (Supra)*, respectively. Joint administrators of the estate of the deceased must act jointly at all times. One administrator acting alone cannot bind the estate of the deceased or file suit alone on behalf of the estate of the deceased.
15. That was the same position taken by the Court in the case that has been cited by the Applicant in his submissions. That is the case of *Re Estate of Mary Ng’onde Mwamunga (deceased)* [2019] eKLR.
16. Where there is more than one administrator in the estate of a deceased person, all the administrators must act jointly.
17. From the foregoing, therefore, the application dated 17th April, 2023 is incompetent and non-compliant with the law. It is clear that the Applicant does not have the consent of his Co-administrator to be substituted as the Plaintiff in this matter. Accordingly, I have but only one option; to dismiss the application, which I hereby do but with no order as to costs.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF JANUARY, 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Wakesho h/b for Mohamud for the Applicant

Mrs. Kariuki for the 1st Defendant/Applicant

N/A for the 2nd Defendant

Court Assistant: Yvette

M.D. MWANGI

JUDGE

