



REPUBLIC OF KENYA



KENYA LAW
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**Shinda v Olgero & another (Environment & Land Case E038 of 2023)
[2024] KEELC 136 (KLR) (24 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 136 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E038 OF 2023
LC KOMINGOI, J
JANUARY 24, 2024**

BETWEEN

EMILY DANIEL SHINDA PLAINTIFF

AND

PARDIYO OLE OLGERO 1ST DEFENDANT

LEPAPA RIKOYIAN 2ND DEFENDANT

JUDGMENT

1. By a Plaint dated 2nd May 2023, the Plaintiff's case is that land title Parcel Number Kajiado/Lorngosua/614 measuring approximately 54.3 hectares belonged to their late father Rikoyian Ole Koluaa who died intestate on 12th June 2000. He was survived by five children;-three daughters and two sons. The Plaintiff being the third born daughter and the two sons are the Defendants herein. Following their father's demise, the Defendants petitioned for Grant of Letters of Administration in Kajiado CMC Succession case No. 72 of 2013 in claiming that they were the only surviving beneficiaries. They were issued with the Grant of Letters of Administration on 9th December 2013 and confirmed on 23rd June 2015. Following the confirmation, the Defendants subdivided Kajiado/Lorngosua/614 into two portions being Kajiado/Lorngosua/6105 and Kajiado/Lorngosua/6106 and registered them their respective names in total disregard of the other beneficiaries.
2. She claims to have lost her rightful share of her father's estate due to the Defendant's unlawful, fraudulent actions and concealment of facts which mislead the court in arriving at its decision. She thus prayed for:
 - a. A declaration do issue that the subdivision of land parcel number Kajiado/Lorngosua/614 into Kajiado/Lorngosua/6105 and Kajiado/Lorngosua/6106 by the defendants and subsequent transfers into themselves was/is fraudulent, illegal, null and void.



- b. An order do issue cancelling and/or revoking the title deeds for land parcel numbers Kajiado/Lorngosua/6105 and Kajiado/Lorngosua/614 issued in the names of the Defendants or any other subsequent titles and be reverted back to Kajiado/Lorngosua/614 in the name of Rikoyian Ole Koluaa.
 - c. An order do issue cancelling all the entries in the register of land parcel numbers Kajiado/Lorngosua/6105 and Kajiado/Lorngosua/6106 entered in favour of the Defendants as a result of the fraudulent, illegal and unlawful transfers.
 - d. The costs of the suit.
 - e. Any other order that this Hon. Court may deem fit to grant.
3. The Defendants who were duly served with copies of plaint and summons to enter appearance did not enter appearance and or file defence within the stipulated period. The matter thus proceeded for formal proof.

Evidence of the Plaintiff.

4. PW1, Emily Daniel Shinda adopted her witness statement as her evidence in chief and produced eleven (11) documents as her exhibits P1-P11 respectively. It is her case that in January 2023, she filed a complaint with the Directorate of Criminal Investigations that the Defendants were wasting away their late father's assets. From the investigations she learnt that the Defendants had filed a succession case and went ahead and subdivided their father's land into two portions registered in their names thus disinheriting her and the other siblings. She thus applied for revocation of the said Grant on 9th February 2023 and later filed this suit.
5. The plaintiff was directed to file final submissions but did not do so.

Analysis and Determination

6. I have considered the pleadings, the evidence on record and the authorities cited. The issues for determination are:
 - i. Whether the Plaintiff is entitled to the reliefs sought;
 - ii. Who should bear costs of the suit?
7. The Plaintiff claims that the Defendants were issued Grant of Letters of Administration in Kajiado CMC Succession case No. 72 of 2013 through concealment of facts and information that they were the only beneficiaries of the late Rikoyian Ole Koluaa and then went on to subdivide his property into two portions in total disregard of the other siblings. The Plaintiff produced copy of the Grant of Letters of Administration marked as P. Exhibit 5, copy of the Application for Confirmation of Grant marked as P. Exhibit 6 and the Certificate of Confirmation of Grant of Administration letters marked as P. Exhibit 7.
8. The Court has perused the said documents and finds that indeed the Defendants were listed and confirmed as the only late surviving dependants of the late Rikoyian Ole Koluaa and went ahead and subdivided Land Parcel Number Kajiado/Lorngosua/614 to Kajiado/Lorngosua/6105 and Kajiado/Lorngosua/6106. The Plaintiff has thus sought this court to declare the subdivision as fraudulent and cancel and or revoke it.
9. It is not in contention that this court is clothed with jurisdiction to issue the reliefs sought as stipulated under Article 162 of the [Constitution](#) and Section 13 of the [ELC Act](#). However, the said subdivision



and registration of the Deceased's land in the Defendant's names emanated from Grant of Letters of Administration which the Plaintiff claims was issued based on concealment of facts. Thus, the reliefs sought amounts to the Plaintiff asking this court to sit on Appeal of the succession cause. This is not only a procedurally irregular manner of Appeal but it is outside this Court's jurisdiction.

10. The Plaintiff concedes to having initiated an application at the Chief Magistrate's Court for the revocation of the Grant and the restoration of the suit property's to the deceased's name, as evidenced by annexed documents. It stands as the appropriate forum vested with the authority to adjudicate on the legality of the Grant and subsequent actions resulting from the confirmation of the Defendants as the sole surviving dependents.
11. In light of this court's lack of jurisdiction over the probate matter, it is incumbent upon this court to refrain from adjudicating on the matter further. The Plaintiff is thus urged to use the proper legal channels and should she be discontented with the determination, then she has the right to Appeal in a proper forum.
12. This suit is hereby struck out with no orders to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 24TH DAY OF JANUARY 2024.

L. KOMINGOI

JUDGE

In the presence of:

N/A for the Plaintiff.

N/A for the Defendant.

Court Assistant – Mutisya.

