



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**E.L.C. NO.234 OF 2012**

**CHARLES SARUNI KIEYA .....1<sup>ST</sup> PLAINTIFF**

**REBECCA WAITIMU KIEYA.....2<sup>ND</sup> PLAINTIFF**

**SAMSON SANKALE KIEYA .....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**LOISE SINTOIIYA KISUYA .....1<sup>ST</sup> DEFENDANT**

**PENINAH DOUGLAS &**

**HUDSON KAMAU NDUNGU (Being the Administrators of**

**The Estate of LOISE WATHERA STANLEY .....2<sup>ND</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR NGONG .....3<sup>RD</sup> DEFENDANT**

**RULING**

This Ruling is in respect to the Plaintiff's Application dated 28<sup>th</sup> May, 2012 and the Preliminary Objection filed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants dated 14<sup>th</sup> September, 2012.

In the Application dated 28<sup>th</sup> May, 2012, the Plaintiffs are seeking for the following orders:-

- 1. THAT the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants either by themselves or their agents, servants, representatives or any other person or body be restrained by way of a temporary injunction from transferring, sub-dividing and/or interfering with title Number Ngong/Ngong/3209 pending the hearing and determination of this suit.**
- 2. THAT the Plaintiffs/Applicants be granted leave to serve the Defendants by substituted, service through Nation Newspapers.**
- 3. THAT the Honourable Court do give any such other or further Orders as may be necessary to enable the ends of justice to be met.**
- 4. THAT the costs be in the cause.**

The application is supported by the Affidavit of the 1<sup>st</sup> Plaintiff who has deponed that he is the eldest son

of the late Stanley Kailol Kieya; that at the time of his death, his father was the registered proprietor of a parcel of land known as Ngong/Ngong/13209 and that he approached the Public Trustee for assistance after his father died.

According to the deposition of the 1<sup>st</sup> Plaintiff, the Public Trustee assisted them and had the property registered in the name of their mother and step mother respectively as Trustees; that he attempted to stop the sub-division of the property by his mother but was attacked in the process, and that it appears that the Defendants will proceed with the sub-division of the land before agreeing on how the same should be shared.

In response, the 2<sup>nd</sup> Defendant deponed that after the death of their father, the suit property was registered in the names of his father's three wives; that she and her brother are the administrators of the estate of their late mother, Loise Waithera Stanley, who died in the year 2016 and that they agreed that the suit property should be sub-divided into three portions.

It is the Respondents case that the Applicants have no locus standi to bring the suit or interfere with the beneficiaries' mode of sub-division of the suit land.

According to the Respondents, the Applicants filed High Court Succession Cause No.313 of 2008 (Mombasa) seeking for orders that are similar to the present ones.

In their amended Preliminary Objection, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have averred that the Plaintiffs have no locus standi to bring this suit; that this suit contravenes the provisions of section 21(4) of the Registered Land Act as read together with section 5 of the Civil Procedure Act and that this suit also contravenes the provisions of section 16 of the Government Proceedings Act.

The Plaintiff's advocate submitted that pursuant to the judgment of the High court in Succession Cause No.1704 of 1992, the suit premises was given to the three wives of the deceased to hold as trustees; that there is no other pending suit involving the parties and that what was previously in court were succession matters involving the late Stanley Kailol Keiya and Loise Waithera Stanley estates respectively.

Counsel submitted that in these two succession matters, the grants were confirmed.

The Defendants' advocate submitted that it has not been denied that there exists a similar claim in Mombasa High Court Succession Cause No. 313 of 2008 in which the Plaintiff is seeking for orders that are similar to the present ones.

Before delving into the merits of the Application, I will first of all determine the issue whether this matter is Res judicata and whether this court has the requisite jurisdiction to deal with the matter.

According to the Plaint, the 1<sup>st</sup> Defendant is the mother to the 1<sup>st</sup> Plaintiff while the 2<sup>nd</sup> Defendant is the Administrator of the Estate of the late Loise Waithera.

The Plaintiffs have deponed in the Plaint that at all material times, the suit property was registered in the name of Stanley Kailol Kieya, who was the husband to the 2<sup>nd</sup> Plaintiff, the 1<sup>st</sup> Defendant and the late Loise Waithera Stanley.

It is the Plaintiffs case that the 1<sup>st</sup> Defendant, who is one of the co-administrators of the estate of the late Stanley Kailol Kieya, and the 2<sup>nd</sup> Defendants, are attempting to sub-divide the suit property without consulting all the beneficiaries of the Estate of the late Stanley Kailoo Kieya and his wife, the late Loise Waithera.

The penultimate prayer in this Plaint is for a permanent injunction to restrain the Defendants from interfering with the suit property.

The Plaintiffs have annexed on their Affidavit a schedule that was prepared by the Public Trustee showing the heirs of the late Stanley Kailol Kieya viz -a -viz the suit property.

The Defendants have annexed on their Replying Affidavit the Certificate of Confirmation of Grant- A grant in Mombasa Succession Cause No.313 of 2008 which shows how the share of late Loise Waithera Stanley in respect to the suit property was supposed to be sub-divided.

The Defendants have also annexed a copy of the Application that the Plaintiffs herein filed in Mombasa Succession Cause No.313 of 2008 in which they sought an order of the court to prohibit the Defendants herein from sub-dividing the suit properties. In the same Application, the Plaintiffs sought for an order to set aside the orders of the court in that matter.

The grounds in support of the chamber summons in Mombasa Succession Cause No.313 of 2008 were as follows:-

- “1. THAT the Applicants/Interested parties are beneficiaries and co-owners of Title Number Ngong/Ngong/3209 that is being held in trust by the widow of the deceased Stanley Kailol Kieya including the deceased Loise Waithera Stanley herein.
2. THAT the Administrators are attempting to sub-divide the land which is held on trust and without consulting all the beneficiaries of the deceased’s estate.
3. THAT the beneficiaries of the estate of Stanley Kailol Kieya are likely to be disinherited by the actions of the administrators as the whole family which comprises of many beneficiaries has not agreed on that sub-division of the land.
4. THAT the administrators are unlawfully and illegally using the estate of the deceased herein to interfere and meddle with the property of the deceased Stanley Kailol Keiya without the express consent and/or authority of the beneficiaries”

After hearing the matter, Odero, J, directed parties to proceed to survey and distribute amongst the beneficiaries of the estate of Loise Waithera only the 10% share assigned to her.

It is therefore obvious that the issues that are being raised in the current Application and suit were raised by the Plaintiffs in Mombasa Succession Cause No.313 of 2008 and a Ruling was delivered on 24<sup>th</sup> September, 2014.

If the Plaintiff’s/Applicant’s herein are not satisfied with the Ruling of Odero, J, they may appeal against it. This Court cannot have a second bite at the cherry. In view of the decision of the High Court, the Application that is before this court is therefore res judicata.

In any event the issues that have been raised in the Plaint and the Application shows that this dispute is in respect to the Succession of the Estate of Stanley Kailol Kieya and Loise Waithera Stanley.

The estate of the late Stanley Kailol Kieya was distributed vide Administration Cause No.80 of 1980 while the Estate of the late Loise Waithera Staley was administered vide Mombasa succession Cause No.313 of 2008.

It therefore follows that any dispute in respect to the distribution of the suit property amongst the beneficiaries of the two estates should be dealt with in those two suits and not in this court.

This court does not have jurisdiction to determine if indeed the Defendants are intermeddling with the Estate of the deceased persons and more so when the dispute has already been dealt with by the High court in the Succession Causes.

It is for those reasons that I allow the Defendants amended Notice of Preliminary Objection dated 4<sup>th</sup>

December, 2014.

For avoidance of doubt, the Plaintiffs' Complaint dated 28<sup>th</sup> May 2012 and the Notice of Motion dated 28<sup>th</sup> May, 2012 are hereby struck out with costs.

Dated, signed and delivered in **Machakos** this 27<sup>th</sup> day of **January, 2017**.

**O.A. ANGOTE**

**JUDGE**