



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 274 OF 2013

MARY WAMBUI KIBE.....1ST PLAINTIFF

TERESIA WAMBUI.....2ND PLAINTIFF

REGINA MUTHONI.....3RD PLAINTIFF

IRENE NJERI.....4TH PLAINTIFF

ELIZABETH WANGITHI.....5TH PLAINTIFF

VERSUS

JAMES WHITTINGTON NJOROGE.....1ST DEFENDANT

JAMES MWANGI GICHUKI.....2ND DEFENDANT

KINYUA GICHUKI.....3RD DEFENDANT

RULING

When this suit came up for hearing on 27th September 2017, the parties agreed to canvass the Preliminary Objection to this Court's jurisdiction to handle this dispute. The Preliminary Objection was canvassed orally by the 2nd defendant and **MR. NDUKU** for the plaintiffs.

The Preliminary Objection was raised in the 2nd defendant's statement of defence and is as follows:

1: That the plaintiffs have no locus standi to file this suit as they have not obtained letters of administration to the Estate of ANTONY WANJOHI NJOROGE

2: That this Court has no powers to cancel a title acquired through a valid Succession Cause.

In arguing the Preliminary Objection which was supported by the 1st defendant, the 2nd defendant submitted that the plaintiffs by this suit seeks to cancel the title to land parcel No. KIINE/RUIRU/1497 which was the subject of **KERUGOYA PRINCIPAL MAGISTRATE'S SUCCESSION CAUSE No. 47 of 2001** where a grant was issued to one **SAMUEL NJOROGE** a brother to the 1st defendant after which the said title was cancelled. This Court cannot therefore investigate the issues regarding the cancellation of the said title. Further, the plaintiffs have filed this suit as representatives of one

ANTONY WANJOHI NJOROGE yet they have only a death certificate and not the grant in respect of the Estate.

In response, **MR. NDUKU** counsel for the plaintiffs submitted that this is not a succession matter but a civil suit which the Court has the requisite jurisdiction to determine.

The 2nd defendant replied that this Court lacks jurisdiction because this dispute was determined in a Succession Cause and the plaintiffs should go that Court to have the grant annulled.

I have considered the Preliminary Objection and also looked at the pleadings herein.

It is clear to me that the two legal issues being raised in the Preliminary Objection are:

1. The plaintiffs locus standi

2. This Court lacks jurisdiction.

The above are legal issues and therefore fall within the definition of a Preliminary Objection as described in the case of **MUKISA BISCUIT CO. WEST END DISTRIBUTORS LTD 1969 E.A 696** by **LAW J.A** when he said:

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”.

LOCUS STANDI

On the issue of lack of locus standi by the plaintiffs to file this suit since they do not have a grant of letters of administration in respect to the Estate of the late **ANTONY WANJOHI NJOROGE**, this suit has not been filed by plaintiffs in any representative capacity as is clear from the plaint filed here on 30th January 2013. Although the 1st plaintiff has described herself as the wife of the said **ANTONY WANJOHI NJOROGE** and the 2nd to 5th plaintiffs as his children, it is clear from the plaint that they have moved to this Court in their own capacities and are not filing this suit on behalf of the Estate of the said **ANTONY WANJOHI NJOROGE**. In that respect therefore, they do not require to have obtained any grant of letters of administration to enable them file this suit. Their locus standi cannot be in doubt and I dismiss that Preliminary Objection.

THIS COURT LACKS JURISDICTION

The 1st and 2nd defendants have submitted, and this is also raised in their respective defences, that the land parcel No. KIINE/RUIRU/1497 (the suit land) was the subject of **KERUGOYA PRINCIPAL MAGISTRATE’S SUCCESSION CAUSE No. 47 of 2001** and cannot therefore be raised in this Court. It is not in doubt, and indeed the plaintiffs have pleaded in paragraph 9 of their plaint, that the suit land was a resultant sub-division of land parcel No. KIINE/RUIRU/94 which was the subject in **KERUGOYA PRINCIPAL MAGISTRATE’S SUCCESSION CAUSE No. 47 of 2001** and therefore the plaintiffs ought to have moved to annul the grant issued in that Court. I think there is merit in that submission.

Although **MR. NDUKU** counsel for the plaintiffs has submitted that this is a civil dispute concerning land and is not a succession case, the pleadings indicate otherwise. The plaintiffs by their plaint are questioning how the defendants became registered proprietors of the suit land which they thereafter sub-divided having fraudulently obtained grant in **KERUGOYA SUCCESSION CAUSE No. 47 of 2001**. In paragraph 10 of the plaint, the plaintiffs have pleaded as follows:

10: “That further the plaintiff shall aver that defendants fraudulently obtained the grant and subsequent titles of the said land”

The plaintiffs then plead the particulars of fraud as follows:

(a) “Failing to disclose to Succession Court in matter of 47/2001 that one JAMES MWANGI had another brother who legally had right to be included”

(b) “Unlawfully undertaking Succession Cause without knowledge or consulting of his brother or his representative (co-administrator of the Estate of NJOROGE MUGERA)”

(c) “Transferring the properties in their names knowing that their transactions were fraudulent as they deprived one ANTONY WANJOHI his share”

(d) “Obtaining signatures of the plaintiffs by purporting to making a domestic agreement and further using those signatures on other transactions of the said land without their consent or knowledge”

The plaintiffs then proceed to plead in paragraph 12 of their plaint as follows:

“That upon conclusion of the Succession Cause, the land KIINE/RUIRU/94 was distributed among the three houses of the deceased but left out ANTONY WANJOHI NJOROGE, his wife the 1st plaintiff or his children rendering them destitute”

Finally, the plaintiffs seek judgment against the defendants in the following terms:

(a) “Order that the Registrar of Titles cancels the defendants’ titles and the partitioning be done in two equal portions”

(b) “Vesting ownership of 1.725 acres of the said land to the plaintiffs”

(c) “Costs of this suit”

(d) “Any further or alternative relief the Court may deem fit to issue”

It is of course correct as submitted by **MR. NDUKU** that the dispute involves land. However, the mere fact that the dispute involves land does not place it within the purview of this Court whose jurisdiction is provided for under **Section 13 of the Environment and Land Court Act**. I do not see in the plaint a claim by the plaintiffs that the defendants, for example, hold the land in dispute in trust for them or any reference to adverse possession of the same. What I see the plaintiffs to be questioning is the manner in which the Succession Court in **KERUGOYA PRINCIPAL MAGISTRATE’S SUCCESSION CAUSE No. 47 of 2001** distributed the land belonging to the Estate of a deceased person. That cannot be done by filing another suit in this case. Instead, the plaintiffs ought to have applied for the annulment of the grant issued by the Succession Court or appealed from the decision of that Court. What is being sought in this case is essentially to reverse the findings of the Succession Court and this Court has no jurisdiction to do so. It would be a different matter if the plaintiffs were seeking remedies that were not raised or could not have been raised and canvassed in the Succession Cause. That is not the position in this case which is basically questioning the findings of orders made in a Succession Cause though filed under the guise of a civil suit. The remedies that the plaintiffs seek are matters for another forum and certainly not for this Court which lacks the requisite jurisdiction to handle them.

The Preliminary Objection on jurisdiction is therefore well founded and I up-hold it.

This suit is therefore struck out with costs to the 1st and 2nd defendants.

B.N. OLAO

JUDGE

3RD NOVEMBER, 2017

Ruling delivered, dated and signed at Kerugoya in open Court this 3rd day of November 2017

5th Plaintiff present

2nd Defendant present.

B.N. OLAO

JUDGE

3RD NOVEMBER, 2017