



**Kimani v Kimani (Environment & Land Case E034 of 2023)
[2024] KEELC 909 (KLR) (20 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 909 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E034 OF 2023
MD MWANGI, J
FEBRUARY 20, 2024**

BETWEEN

ANNA WANJIRA KIMANI PLAINTIFF

AND

LUCY WARIGIA KIMANI DEFENDANT

RULING

Background

1. The Plaintiff in this matter is the administrator of the Estate of Lydia Njoki Kimani, deceased by virtue of a grant of letters ad litem. The Plaintiff avers that the deceased was the registered owner of Plot No. T2 Kahawa West Commercial plots in Kamae Settlement Phase 1, Plots 183 and 263, and unnamed parcels of land in Juja.
2. It is the Plaintiff's case that the Defendant, without the blessings of the family and contrary to Law, intends to dispose of the properties left behind by the deceased.
3. The Plaintiff in his Notice of Motion dated 29th January, 2024 therefore prays for an order prohibiting the Defendant from selling and or transferring the above properties pending hearing and determination of the suit. The Plaintiff further prays for an order against further collection of rent from Plot T2 Kahawa West Commercial Plots in Kamae Settlement Phase 1 plots 183 and 263 and that the same be deposited in a joint account between herself and the Respondent. It is prayed that the OCS Kahawa West executes the order.
4. The Application is supported by the Plaintiff's own affidavit deposed on 29th January, 2024. In the affidavit, the Plaintiff has attached a letter of administration ad litem issued to her. She reiterates the averments in her plaint and prays for the grant of the orders sought.
5. In spite of being served, the Defendant did not respond to the Application by the Plaintiff.



Determination:

6. On 14th February, 2024, the Plaintiff through her Advocate, Mr. Kimani, informed the Court that the family had filed a Succession Cause at the Nairobi High Court, being Succession Cause No. E1394 of 2023, in the matter of the Estate of Lydia Njoki Kimani. They however, according to the Advocate, feared that filing this application in the Succession Cause might derail the Succession Cause.
7. In view of the disclosure of the existence of a Succession Cause in the Estate of Lydia Njoki Kimani, the issue of jurisdiction prominently glares at me. I must determine whether I have the jurisdiction to entertain the Plaintiff's application. A court can only exercise jurisdiction as conferred on it by the constitution or other written law. See *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR. Consequently, every court must ascertain whether or not it has jurisdiction in any particular matter placed before it before embarking on determining the matter.
8. In the now famous case of, "The *Owners of Motor Vessel Lilian S v Caltex Kenya Ltd* [1989] KLR, the court held that:-

"It is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

9. There was really no need for the Plaintiff to file this case, having already filed a Succession Cause in the Estate of the Deceased as I will demonstrate shortly.
10. Githinji J, in *Re Estate of Kitur Chepsungulgei (Deceased)* [2021] eKLR, quoted, William Musyoka, in his book, *Law of Succession*, Law Africa 2006 at page 115 where he notes that the provisions of Section 47 of the *Law of Succession Act* gives the court wide discretion in dealing with testamentary and administrative issues. The import being that Section 47 gives the court the power to issue protective orders in order to safeguard the estate of a deceased person.
11. The Judge further cited the Court of Appeal decision in *Floris Piezzo & Another v Giancarlo Falasconi* [2014] eKLR, where the court while considering whether an injunction can issue in a Succession Cause expressed itself as follows;

"We have carefully considered the grounds of appeal, rival written and oral submissions, and the law. The application before the high Court was for temporary injunction to restrain the appellants from dealing with the suit premises in a manner inimical to the estate of the deceased. The question which arose and had to be determined first was whether the Court had jurisdiction to grant an injunction in a Succession Cause. The appellants took the position that the Court had no such jurisdiction whereas the Respondent took the contrary position. However, the High Court was persuaded that Rule 73 of the *Probate and Administration Rules* reserved the Court's inherent jurisdiction to allow for the grant of injunctions in deserving cases. We are in total agreement with this conclusion. We have no doubt at all that the *Law of Succession Act* gives the Court wide jurisdiction in dealing with testamentary and administration issues of an estate. Indeed Section 47 of the said *Act* gives the Court jurisdiction to entertain any application and determine any dispute under the *Act* and to pronounce such decree and orders as may be expedient. It cannot be said that such



decrees and orders would exclude injunction orders. In other words, we are of the same view that Section 47 of the *Act* gives the Court all-embracing powers to make necessary orders, including injunctions where appropriate to safeguard the deceased's estate. This section must be read together with Rule 73 of the *Probate and Administration Rules* which further emboldens Court's jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court. We would imagine such orders would also include injunctive orders.”

12. The upshot is that the High Court has jurisdiction to issue all manner of orders including the issuance of protective orders against the wrongful disposal and or intermeddling with the estate/property of the deceased as enumerated under Section 45 of the *Law of Succession Act* where appropriate and necessary in order to preserve and safeguard, the estate of a deceased person.
13. The jurisdiction to deal with the Plaintiff's application as presented is with the High Court.
14. Accordingly, I strike out the Plaintiff's application for want of jurisdiction but with no orders as to costs.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY, AT NAIROBI THIS 20TH DAY OF FEBRUARY, 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:-

Ms. Thuo h/b for Mr. Mugo for the Plaintiff/Applicant

N/A for the Defendant/Respondent

M.D. MWANGI

JUDGE

