



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KERUGOYA

ELC CASE NO. 310 OF 2014

PURITY WANJIKU GICHUKI.....PLAINTIFF

VERSUS

1. ROGERS MWANGI MUREITHI

2. ERICK MWANGI GICHUKI.....DEFENDANTS

RULING

The 1st defendant has filed a Preliminary Objection to the plaintiff's suit in the following terms:-

1. That the plaintiff's suit is fatally defective in law and substance, is a legal muddle and amounts to abuse of Court process on the grounds that the plaintiff lacks locus standi to institute proceedings for and on behalf of the Estate of the late Francis Gichuki Mboi who died on 8th January 2007 as she is not the legal representative of the said Estate.

The genesis of this Preliminary Objection is that on 17th December 2014, the plaintiff filed a suit against the two defendants seeking judgment against them jointly and severally in the following terms:-

1. A declaration that the defendants fraudulently sub-divided land parcel No. INOI/KARIKO/2013 the property of Francis Gichuki Mboi (deceased).

2. A declaration that the sub-divisions and registration of parcels No. INOI/KARIKO/2710, 2711, 2712 and 2713 is null and void.

3. An order that the titles to parcels of land No. INOI/KARIKO/2710, 2711, 2712 and 2713 be cancelled and the same be restored to the original parcel No. INOI/KARIKO/2013 the property of Francis Gichuki Mboi.

4. The defendants do pay the plaintiffs exemplary damages.

5. Costs of this action.

6. Such further or other relief.

The plaintiff's case is that she is the daughter of one **FRANCIS GICHUKI MBOI** (deceased) who died on 8th January 2007 and until his death was the registered proprietor of land parcel No. INOI/KARIKO/2013 where the plaintiff was born and continues to live. However, on 18th April 2014

the plaintiff discovered that the said land had been sub-divided into four portions being INOI/KARIKO/2710, 2711, 2712 and 2713 (the suit land) of which two parcels were transferred to the 1st and 2nd defendants while the other two parcels i.e. INOI/KARIKO/2710 and 2711 remained the property of the deceased.

The 1st defendant filed a defence in which he pleaded that the deceased had prior to his death transferred parcel No. INOI/KARIKO/2712 to the 1st defendant and INOI/KARIKO/2713 to the 2nd defendant and retained parcels No. INOI/KARIKO/2710 and 2711. He added that those transfers were done lawfully. He also raised a notice of Preliminary Objection about the locus of the plaintiff to file this suit as she is not the administratrix or legal representative of the deceased.

The 2nd defendant did not file any pleadings.

The Preliminary Objection was canvassed by way of written submissions with **Mr. NJAGE** advocate filing on behalf of the plaintiff and **Mr. KAHIGA** advocate on behalf of the 1st defendant.

I have considered the 1st defendant's Preliminary Objection and the submissions by counsel.

A Preliminary Objection, as was held in the case of **MUKISA BISCUIT MANUFACTURING COMPANY LTD VS WEST END DISTRIBUTORS LTD 1969 E.A 696** raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It is **Mr. NJAGE's** submissions that the plaintiff, being the daughter of the deceased and who resides on the suit land has a cause of action and locus standi. Reliance is placed on the ***Constitution of Kenya 2011, the Environment and Land Court Act 2011*** and the following cases:-

1. ***NJAU VS CITY COUNCIL OF NAIROBI 1983 K.L.R 625.***
2. ***KAKAI VS TOWN CLERK OF WEBUYE COUNTY COUNCIL E.A.L.R (2010) 2 E.A 188.***
3. ***SILVERSTEIN VS CHESONI 2002 1 K.L.R 867.***

Mr. KAHIGA on the other hand has submitted that having been served with the defence and the Preliminary Objection, the plaintiff has not filed any reply thereto nor a list of documents to prove that she has taken out letters of administration and litem for purposes of filing this suit on behalf of the Estate of the deceased.

Locus standi, is a matter of law and therefore this Preliminary Objection is well taken. It is also clear from the pleadings that the plaintiff is filing this suit on behalf of the Estate of her deceased father. It is also admitted by her in her statement as follows:-

"We had not taken administration proceedings in respect of his Estate"

Although the plaintiff has not specifically pleaded that she files this suit on behalf of the Estate of the deceased, it is clear from her plaint that the suit land has always been the property of the deceased and is therefore part of his Estate. It is now well settled that a party who seeks to file a suit on behalf of the Estate of a deceased person must of necessity obtain letters of administration – **TROVISTIK UNION INTERNATIONAL & ANOTHER VS JANE MBEYU & ANOTHER 1993 K.L.R 230.** Although the plaintiff has not described herself as an administrator of the Estate of the deceased, her pleadings leave no room for doubt that she has moved this Court to protect her late father's property. This is because at no time has the suit land ever belonged to her. Indeed pursuant to the provisions of **Section 45 (1) of the Law of Succession Act,** the plaintiff is intermeddling with the Estate of the deceased. She cannot be clothed with any locus standi before obtaining a limited grant or a full grant of letters of administration.

Looking at the cases cited by counsel for the plaintiff, they do not aid her cause. In the case of **NJAU** the plaintiff's private right had been interfered with and so he was entitled to file suit. The case of **KAKAI** is really not on locus standi but confines itself to the expeditious disposal of cases.

The plaintiff having conceded in her own statement that no application for the grant of letters of administration has been done and in view of the fact that the subject of the suit is property of a deceased person, it follows that she lacks the locus standi to file this suit.

In the circumstances, I up-hold the 1st defendant's Preliminary Objection with the result that the plaintiff's suit is struck out with costs to the 1st defendant.

B.N. OLAO

JUDGE

4TH NOVEMBER, 2016

Ruling delivered, dated and signed in open Court this 4th day of November 2016.

Ms Ndorongo for Mr. Njage for the Plaintiff present

Ms Manyasa for Mr. Kahiga for the 1st Defendant present

B.N. OLAO

JUDGE

4TH NOVEMBER, 2016