



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 281 OF 2014**

GABRIEL WAWERU NG'ANGA .....1<sup>ST</sup> PLAINTIFF

PERIS WAIRIMU NG'ANG'A .....2<sup>ND</sup> PLAINTIFF

VERSUS

SAMUEL GITAU NG'ANG'A .....1<sup>ST</sup> DEFENDANT

BERNARD KINYORO NELSON ..... 2<sup>ND</sup> DEFENDANT

**RULING**

The plaintiff filed this suit against the defendants seeking the main relief that the following (3) three parcels of land i.e.:-

1. **LOC 6/MUNGUINI/3**
2. **LOC 6/GIKARANGU/292 and**
3. **LOC 6/GIKARANGU/1692**

are held in trust by the defendant for themselves and the plaintiffs since the said parcels of land belonged to their late father NGANGA NGETHE and should therefore be shared between the six houses in that family.

The defendants filed a defence admitting that they hold parcel No. LOC 6/GIKARANGU/292 in trust but the said trust excluded Alice Wanjiru and Peris Wairimu adding that they hold those parcels pursuant to a grant issued by the High Court in Nairobi. The defendants however denied the other averments including the averments that they obtained registration of the said parcels of land through fraud. Further, the defendants pleaded that this Court has no Geographical jurisdiction to hear this matter which is infact res-judicata.

The defendants simultaneously with their defence filed a Preliminary Objection raising the following issues:-

1. ***The Honourable Court has no Geographical Jurisdiction to hear this matter as the subject properties are situated in Maragua Sub-county of Muranga County***
2. ***The Court is functus official as the matter has been finalized in the High Court of Kenya at Nairobi***
3. ***The matter is res-judicata as it has been adjudicated upon by the High Court at Nairobi via***

***Public Trustee Administration Cause No. 385 of 1979.***

That Preliminary Objection is the subject of this ruling.

I have considered the submissions by both Mr. Mwara for the defendants and Mr. Mwangi Ben for the plaintiffs. I have also considered the pleadings herein.

It is not in dispute that the land parcels subject of this suit are in Muranga County. The nearest Court in which this dispute would therefore be filed in is in Muranga. However, as the dispute involves land and since there is no Environment and Land Court at Muranga, the plaintiff has opted to file this case at this Court. The defendants are of the view that the suit ought to have been filed in Nyeri High Court and that the plaintiff has only chosen this Court in order to “***punish***” the defendant. It is not clear from the submissions of Mr. Mwara as to how the defendants will be punished if this suit is heard here rather than Nyeri. Is the High Court in Nyeri nearer to the parties than this Court? That has not been demonstrated. Nonetheless, Mr. Marwa in his submissions has attached the then Chief Justice’s (Gicheru) directions dated 19<sup>th</sup> February 2009 relating to proper Courts where suits should be filed. Counsel has underlined Mukurweini Court which falls under the supervision of the High Court in Nyeri. I am not sure what Mr. Marwa was alluding to given the fact that the land parcels subject of this suit are infact situated in Muranga and not in Nyeri. Mr. Mwangi Ben for the plaintiff has submitted that the nearest Environment and Land Court to Muranga is this Court and not Nyeri. If Mr. Marwa is placing reliance on the circular issued by the then Chief Justice Gicheru dated 19<sup>th</sup> February 2009 and those issued by the Chief Justice Dr. Willy Mutunga dated 25<sup>th</sup> July 2014, then I do not see how they support the defendant’s claims that this Court has no jurisdiction. It is the practice that suits should be filed in the Courts nearest to which the subject matter is situated and there is nothing to suggest that this Court is not the nearest Court to Muranga where the dispute properties are situated. If the subject matter was within the pecuniary jurisdiction of the subordinate Court at Muranga, then there would have been no reason why the same would not be filed and determined there. However, the issue at hand involves trust and only this Court can handle such disputes. The objection by the defendants questioning this Court’s geographical jurisdiction to handle this suit is lacking in merit and is hereby dismissed and in any case, the mere fact that the land subject matter of a land dispute is not within the Geographical jurisdiction of this Court, would not be a reason to down tools as this Court enjoys the same status as the High Court.

The other issues relate to this suit being res-judicata having been adjudicated upon by the High Court in Nairobi via Public Trustee Administration Case No. 385 of 1979 and that therefore this Court is functus officio. No proceedings were availed to me to demonstrate that this matter has infact been litigated upon by another Court and is therefore caught up by the provisions of **Section 7 of the Civil Procedure Act**. It was the duty of the defendant to avail proceedings from the High Court Nairobi or any other Court to enable me decide whether infact this suit is res-judicata. In the absence of those proceedings, the Court is un-able to determine the issue of res-judicata and can only conclude that infact no such other suits exists and if they do, they did not relate to the issues of fraud or trust raised herein.

In the circumstances, I find no merit in the Preliminary Objection dated

7<sup>th</sup> November 2014 and filed herein on 10<sup>th</sup> November 2014 and dismiss the same with costs to the plaintiffs.

**B.N. OLAO**

**JUDGE**

**6<sup>TH</sup> MARCH, 2015**

6/3/2015

Before

B.N. Olao – Judge

Gichia – CC

Mr. Mbugua for Ben for Plaintiff – present

Mr. Waweru for Mr. Mwara for Defendant – present

COURT: Ruling delivered this 6<sup>th</sup> day of March, 2014 in open Court.

Mr. Mbugua for Mr. Ben for Plaintiff present

Mr. Waweru for Mr. Mwara for Defendant present.

**B.N. OLAO**

**JUDGE**

**6<sup>TH</sup> MARCH, 2015**

MR. WAWERU

There is the application dated 15<sup>th</sup> October, 2014. We can hear it by way of written submissions to be filed on or before 13<sup>th</sup> April, 2015.

MR. MBUGUA

Ok.

COURT

Be it so.

**B.N. OLAO**

**JUDGE**

**6<sup>TH</sup> MARCH, 2015**