



**Wangui & 4 others v Nduta (Environment & Land Case
E056 of 2023) [2024] KEELC 1729 (KLR) (21 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1729 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E056 OF 2023**

**JG KEMEI, J
MARCH 21, 2024**

BETWEEN

**JANE WATIRI WANGUI 1ST PLAINTIFF
TABITHA MWIHAKI NJOROGE 2ND PLAINTIFF
LEAH WANJIRU WANGUI 3RD PLAINTIFF
MATHEW KAMAU WANGUI 4TH PLAINTIFF
DAVID NJIHIA WANGUI 5TH PLAINTIFF**

AND

ANASTACIA WANGUI NDUTA DEFENDANT

RULING

1. The Plaintiff filed suit against the Defendant vide the Plaint dated 30/10/2023. The parties herein are related being heirs of the late Nduta Kihoti Mbuthia, their deceased grandmother.
2. The Plaintiffs aver that despite the estate of their grandmother having been succeeded vide Certificate of Confirmation of Grant dated 21/9/2017, the Defendant has started illegally disposing their inheritance instead of distributing it to the beneficiaries.
3. That despite urging the Defendant to comply with the Confirmed Grant issued in the estate, the Defendant has remained adamant in her quest to dispose the land with the risk of rendering them homeless.
4. Consequently, the Plaintiffs sought the following orders:-
 - a. That an interim injunction be granted ordering the Respondent, his agents, employees and/ or anybody in his name from constructing, building, interfering, selling, disposing and/



or alienating the property known as Land Reference L.R. No. Ruiru/KIU Block 2/21797 pending the hearing and determination of this application.

- b. That an interim injunction be granted ordering the Respondent, his agents, employees and/or anybody in her name from constructing, building, interfering, selling, disposing and/or alienating the property known as Land Reference L.R. No. Ruiru/KIU Block 2/21797 pending the hearing and determination of this suit.
 - c. That an interim injunction be granted ordering the Respondent, his agents, employees and/or anybody in her name to cease and desist from harassing in any manner whatsoever the quiet and peaceful living of the Plaintiff/Applicants within the aforementioned parcel of land pending the hearing and determination of this suit.
 - d. That the Officer Commanding Ruiru Police Station to ensure that order (c) hereof is strictly complied with.
 - e. Costs of the suit.
 - f. Any other relief that this Honourable Court may deem just to grant.
5. Simultaneously, the Plaintiffs filed the Notice of Motion dated 30/10/2023 seeking interalia injunctive orders against the Defendant from interfering and or disposing the suit property pending the hearing and determination of the suit.
6. In opposing the suit and the application, the Defendant raised a Preliminary Objection on the following grounds:-
- a. That the minimum pecuniary limit for this Honourable Court is Kenya Shillings Twenty Million (Kshs. 20,000,000/-) with anything less than that, being a preserve of the Magistrates Court pursuant to Sections 7 & 9 of the Magistrates Court Act.
 - b. That the suit property herein, to wit – RUIRU/KIU BLOCK 2/21797, and all attachments thereto, are valued at less than Kenya Shillings Twenty Million (Kshs. 20,000,000/-).
 - c. That according to a valuation conducted by the Ruiru Sub County Valuer, the suit property and all attachments thereto, were valued at approximately Kenya Shillings Eight Million Only (Kshs. 8,000,000/-) as at 2022 (Annexed hereto is a copy a letter dated 19th January 2023 by the referenced Valuer to that effect.
7. The Court was urged to down its tools on the basis that the Magistrate Court enjoys the jurisdiction to determine the suit.
8. In response to the Preliminary Objection the Plaintiffs filed a reply dated 12/12/2023 terming the Preliminary Objection as frivolous, vexatious and an abuse of the process of Court. Relying on Article 162(2) (d) together with Section 13 of *Environment and Land Court Act*, they contended that this Court has original jurisdiction to hear and determine the matter and the Court as urged to dismiss the Preliminary objection.
9. Parties argued the Preliminary Objection orally in Court on 20/3/2024 and reiterated their positions stated above.
10. The key issue for determination is whether the Preliminary Objection is merited.



11. Conferment of jurisdiction to a Court is a legislative function. It can only be donated by the Constitution and Statute or both. It cannot be conferred by judicial craft or any other means. See Samwel Kamau Macharia & Anor. v. Kenya Commercial Bank & 2 Others [2008]eKLR.

12. It is an important legal policy that jurisdiction is determined at first instance to save Court's time and resources. It is pointless to entertain a matter only for the outcome to be a subject to a challenge later on.

13. The legal framework that sets down the jurisdiction of the Court is laid down in Article 162(2)(d) read together with Section 13 of the Environment and Land Court Act. It states as follows:-

“(2) Parliament shall establish Courts with the status of the High Court to hear and determine disputes relating to-

- a. employment and labour relations; and
- b. the environment and the use and occupation of, and title to, land.”

14. Section 7 of the Magistrate's Act sets out the pecuniary jurisdiction of the Magistrate Court as follows:-

“7.

(1) A Magistrate's Court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed—

- (a) twenty million shillings, where the Court is presided over by a chief magistrate;
- (b) fifteen million shillings, where the Court is presided over by a senior principal magistrate;
- (c) ten million shillings, where the Court is presided over by a principal magistrate;
- (d) seven million shillings, where the Court is presided over by a senior resident magistrate; or
- (e) five million shillings, where the Court is presided over by a Resident Magistrate.

(2)”

15. Magistrates are empowered to handle land cases under the provisions of Section 9 (a) of Magistrates Court Act which states as follows:-

“9. A Magistrate's Court shall —

- (a) In the exercise of the jurisdiction conferred upon it by section 26 of the Environment and Land No. 26 Claims relating to violation of human rights. Claims in employment, labour relations claims; land and environment cases. 1788 No. 26 Magistrates' Courts 2015 Court Act and subject to the pecuniary limits Cap. I2A under section 7(1), hear and determine claims relating to-



- (i) environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- (ii) compulsory acquisition of land;
- (iii) land administration and management;
- (iv) public, private and community land and contracts, chores in action or other instruments granting any enforceable interests in land; and
- (v) environment and land generally.”

16. Section 12 of the Civil Procedure Act provides that suits ought to be instituted where the subject matter is situate. It states as follows:-

“Suit to be instituted where subject matter situate Subject to the pecuniary or other limitations prescribed by any law, suits-

- (a) for the recovery of immovable property, with or without rent or profits;
- (b) for the partition of immovable property;
- (c) for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
- (d) for the determination of any other right to or interest in immovable property;
- (e) for compensation for wrong to immovable property;
- (f) for the recovery of movable property actually under distraint or attachment, where the property is situate in Kenya, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business, or personally works for gain.”

17. The Defendant has annexed a Valuation Report dated 19/1/2023 carried out by the Government Valuer indicating the value of the suit land as Kshs. 8M only. Going by the unchallenged Valuation disclosed therein the Court finds that the suit ought to be filed before the Principal Magistrate’s Court whose pecuniary jurisdiction is Kshs. 10M.

18. From the foregoing, I find that the suit is situate at Ruiru area and the nearest Court is Ruiru Law Courts. Equally, the value of the land having been disclosed as Kshs. 8M, I find that the Ruiru PM has jurisdiction to determine the matter.



19. Consequently, the file be and is hereby transferred to Ruiru Principal Magistrate's Court for hearing and determination. It shall be placed before the Hon. Principal Magistrate on 9/4/2024 for further directions and orders.

20. I make no orders as to costs.

21. Orders accordingly.

DATED, SIGNED & DELIVERED AT THIKA VIA MICROSOFT TEAMS THIS 21ST DAY OF MARCH, 2024.

J G KEMEI

JUDGE

Delivered online in the presence of;

Ms Mwema HB Kololo for 1st – 5th Plaintiffs

Defendant – Absent

Court Assistant – Oliver

