



Koinange & 2 others (Suing as Administrators of the Estate of the Late Charles Karuga Koinange) v Mitithiru Company Limited (Environment & Land Case E333 of 2022) [2024] KEELC 1414 (KLR) (14 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1414 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E333 OF 2022
OA ANGOTE, J
MARCH 14, 2024**

BETWEEN

**PETER MBIYU KOINANGE 1ST PLAINTIFF
ISABELLA WANJIKU KARANJA 2ND PLAINTIFF
SAMUEL KARUGA KOINANGE 3RD PLAINTIFF
SUING AS ADMINISTRATORS OF THE ESTATE OF THE LATE CHARLES
KARUGA KOINANGE**

AND

MITITHIRU COMPANY LIMITED DEFENDANT

RULING

1. There were several applications before the Court but the parties agreed that the 3rd Plaintiff's Notice of Motion dated 17th November 2022 and brought under Order 2 Rule 15, Order 9 Rule 13 and Order 51 of the Civil Procedure Rules and Section 56 of the Advocates Act be heard first. The 3rd Plaintiff is seeking orders that:
 - a. The Court be pleased to strike out this suit.
 - b. The Court do hold and declare that the firm of Ashford & Co Advocates has not been appointed by the Plaintiffs to act for them in this suit.
 - c. Costs of and occasioned by the 3rd Plaintiff and the Defendant to date in defending the suit be paid for by Messrs Ashford Mugwuku personally and the 1st Plaintiff.
2. The application is based on several grounds and supported by an affidavit sworn by the 3rd Plaintiff who deponed that he is one of the administrators of the Estate of the late Charles Karuga Koinange



(hereinafter ‘the deceased’) alongside the 1st and 2nd Plaintiffs and that the suit property, in this case, Nairobi/Block91/131 did not form part of the estate of the deceased, a matter that was confirmed by the lands office.

3. The 3rd Plaintiff deponed that the current suit was instituted in his name and the names of his co-administrators without their consent; that the three administrators do not have a common advocate and specifically that the firm of Ashfords & Co Advocates does not act for the Estate of the deceased.
4. According to the 3rd Plaintiff, the said firm acted for the 1st Plaintiff while the firms of Murgor Advocates and Kamau Kuria Advocates acted for the 2nd Plaintiff and the 3rd Plaintiff respectively and that the suit property does not vest in the legal representatives of the deceased as there is no proof that it belonged to the deceased.
5. It was deponed that the suit property was introduced to the succession cause by the 1st Plaintiff and his advocate but they never furnished the other administrators with proof that the suit property belonged to the deceased and that in view of the foregoing, the application should be allowed.
6. The 3rd Plaintiff filed a Further Affidavit where he deponed that the deceased surrendered the suit property and Nairobi/Block91/132 to the Government.
7. The 2nd Plaintiff filed a Replying Affidavit in which she averred that she is one of the administrators of the Estate of the deceased and that she supports the 3rd Plaintiff’s application only to the extent that the instant suit should be struck out on the grounds that no joint instructions were issued by the co-administrators to the firm of Ashford & Co. Advocates to file the instant suit on behalf of the Estate of the deceased.
8. On whether the suit property formed part of the Estate of the deceased, the 2nd Plaintiff submitted in the affirmative. She deponed that the suit property formed part of the Estate and was listed in the Partial Certificate of Confirmation of Grant that was issued after a partially successful mediation where a Mediation Agreement dated 18th November 2019 was adopted.
9. It was the deposition of the 2nd Plaintiff that the 3rd Plaintiff participated in the mediation and signed the Mediation Agreement; that the 3rd Plaintiff did not bring up the issue of the suit property not belonging to the Estate of the deceased during the administration of the Estate and that he has just brought up the issue in the instant suit.
10. In his submissions, the 3rd Plaintiff’s counsel submitted that where a suit is filed without the authority of the client, it ought to be struck out; that where there are two or more legal representatives administering an estate, none of them can unilaterally instruct a firm of advocates to act and that instructions should be issued jointly.
11. The 3rd Plaintiff’s counsel submitted that the suit property does not form part of the Estate of the deceased as it was surrendered back to the government in 1991; that the said land did not form part of the partial grant and that the matter was still under consideration by the Succession Court.
12. The cases of *Re Estate of Teresa Wangui Murunga (Deceased)* [2021] eKLR and *Mary Wangui Karanja & another v Rhoda Wairimu Karanja & another* [2020] eKLR were relied upon.
13. It was also submitted that where an advocate acts without authority as the firm of Ashford & Co. Advocates has in this suit, they can be ordered to pay the costs of the litigation involved. The case of *East African Portland Cement Ltd v Capital Markets Authority & 4 Others* [2014] eKLR was relied upon.
14. In conclusion, the cases of *Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai Estate of & 4 Others* [2014] eKLR and *Republic v Communication Authority of Kenya & Another Ex-Parte Legal Advice*



Centre Aka Kituo Cha Sberia [2015] eKLR were relied upon to argue that the 3rd Plaintiff as the successful party should be awarded the costs.

15. The Defendant's counsel submitted that the instant suit was filed by the firm of Ashford & Co. Advocates without the knowledge and authority of two of the three co-administrators of the Estate of the deceased.
16. It was argued that the suit is consequently defective and should be struck out. The cases of Wilfred N. Konosi t/a Konosi & Co. Advocates v Flamco Limited [2017] eKLR, Ochieng Onyango Kibet & Obaga Advocates v Akiba Bank Limited [2007] eKLR, Re Estate of Makokha Idris (supra) and Republic v Disciplinary Tribunal of the Law Society of Kenya Exparte John Wacira Wambugu & 2 Others [2016] eKLR were relied upon.
17. The 2nd Plaintiff's counsel submitted that no joint instructions were issued to the firm of Ashford & Co. Advocates to file the instant suit on behalf of the Estate of the deceased. The 1st Plaintiff did not file any submissions.

Analysis and Determination

18. The 3rd Plaintiff has averred that this suit should be struck out on two grounds. Firstly, that the suit property does not form part of the Estate of the deceased that is being administered by the Plaintiffs; and secondly, that the suit was filed without the consent of all the co-administrators.
19. The latter ground has been supported by the Defendant and the 2nd Plaintiff. The 2nd Plaintiff has however averred that the suit property forms part of the Estate of the deceased.
20. Order 1 Rule 13 of the Civil Procedure Rules provides as follows:

- “(1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding, and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.
- (2) The authority shall be in writing signed by the party giving it and shall be filed in the case.”

21. Section 82 (a) of the Law of Succession Act on the other hand provides as follows:

- “Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—
- a. to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative.”

22. In Re Estate of Makokha Idris (2019) eKLR, Justice Musyoka stated as follows concerning the position of administrators:

“It must be stated that even though there are four administrators in places in law there is only one administration or representation to the estate of the deceased. The four administrators hold one grant, which appoints all four of them as administrators. None of them holds a grant which makes them the sole administrators of the estate. Since there is only one administration, and not four, it behoves the four administrators to act as one with regard to



managing the estate of the deceased. Responsibilities and duties must be shared. They must agree on the management of the assets. They must take a common stand on the expenses of administration and on the settlement of liabilities and debts and other outgoings. It should not be the business of one or a section of the administrators to make decisions on behalf of the estate, that falls upon all four of them... The powers conferred on administrators by section 82 of the Law of Succession Act are exercisable by all the four administrators named in the grant, and all the duties imposed on administrators by section 83 of the Act fall on all four the administrators. The four cannot purport to act singly or solely, unless, of course, there has been delegation of responsibility.”

23. In the John Wacira Wambugu Case (2016) eKLR, Odunga J, as he was then, held as follows:

“The legal position of joint administrators was dealt with in *Willis Ochieng Odhiambo v. Kenya Tourist Development Corporation & Another* Kisumu HCCC No. 51 of 2007, where the Court while citing with approval Lewin on Trusts, 16th Edn. at 181; *Williams & Mortimer: Executors, Administrators & Probate and Bullen & Leake & Jacobs: Precedents of Pleadings*, 13th Ed. at 373 held that in the case of co-trustees of a private trust, the office is a joint one and that where the administration of the trust is vested in co-trustees they all form as it were one collective trust and therefore must execute the duties of their offices in their joint capacity. It was further held that although a strict definition of “trustee” does not apply to personal representatives who hold property upon trust for the estate, the legal responsibilities and liabilities of executors and administrators of estates are the same and are treated similarly where matters of procedure are in issue. It is therefore my view and I hold that in such circumstances a compromise of a cause of action must be by the administrators jointly and any purported compromise by only one when the other denies having authorised such compromise cannot stand.”

24. It is on the basis of the above law that the 3rd Plaintiff’s application falls for determination. Consideration that it is not in dispute that the three Plaintiffs are the co-administrators of the Estate of the deceased, it follows that they should act as a unit in all matters pertaining to the Estate of the deceased.

25. The 2nd and 3rd Plaintiffs have denied giving consent for the filing of this suit. The suit was filed by the firm of Ashford & Co. Advocates who are acting for the 1st Plaintiff. There is no evidence on record to show that the said firm sought the consent of the 2nd and 3rd Plaintiffs (who are represented by other law firms) before filing the suit.

26. There is also no evidence that the 2nd and 3rd Plaintiffs delegated any or part of their responsibilities to the 1st Plaintiff. In view of the foregoing, keeping all factors constant, the logical conclusion is that the instant suit was filed without the consent of the 2nd and 3rd Plaintiffs who are co-administrators of the Estate of the deceased alongside the 1st Plaintiff, and ought to be struck out.

27. However, this court should interrogate why there seems to be disparity between the co-administrators of the Estate of the deceased. I say so because although the 3rd Plaintiff has argued that the suit ought to be struck out on the ground that the suit property does not form part of the Estate of the deceased, the 2nd Plaintiff stated that the suit property belonged to the deceased and formed part of the properties listed in the grant. A Further Rectified Partial Certificate of Confirmation of Grant was annexed in support of this position.



28. This court is left guessing as to whether there is a conspiracy amongst the co administrators to either leave out the suit property from the succession proceedings of the Estate of the deceased or that the 1st Plaintiff is simply harassing the Defendant vis a vis averment that the suit property forms part of the Estate of the deceased and the same was acquired fraudulently.
29. Indeed, the legal issue that arises is what happens when co-administrators do not agree on whether they should file a suit on behalf of the Estate of the deceased. Can one administrator pursue a cause of action on behalf of the Estate of the deceased in a situation where the others are not willing to do so instead of summarily striking out the suit?
30. In view of the foregoing, I find that the fact of whether the suit property formed part of the Estate of the deceased cannot be ascertained without conducting a mini-trial. The current application is not the forum to conduct such an enquiry.
31. Further, this court should, as a matter of fair hearing, give the 1st Plaintiff a chance to be heard on the issues he has raised in so far as the suit property is concerned and make a determination, after trial, on whether he had a justification in bringing the suit in the first place.
32. Considering that the 2nd and 3rd Plaintiff's do not support the suit, the same having been filed without their consent, they can be excluded from the proceedings, and allow the 1st Plaintiff ventilate his case. The court can only make a determination on the propriety of the suit after hearing the 1st Plaintiff herein, and not locking him out at this stage.
33. For those reasons, the application dated 17th November 2022 is dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 14TH DAY OF MARCH, 2024.

O. A. ANGOTE

JUDGE

In the presence of;

Ms Musau holding brief for Ashford for 1st Plaintiff

Mrs Nduta Kamau for 3rd Plaintiff

Mr. Kala for 2nd Plaintiff

Mr. Ondieki for Defendant

Court Assistant - Tracy

