



**Gekara v Gekara & 3 others (Environment & Land Case
97 of 2021) [2024] KEELC 4603 (KLR) (22 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4603 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 97 OF 2021**

JM KAMAU, J

MAY 22, 2024

BETWEEN

ZACHARY OCHWARI GEKARA PLAINTIFF

AND

HENRY BOSIRE GEKARA 1ST DEFENDANT

BENJAMIN MOKUA GEKARA 2ND DEFENDANT

JOSEPH OKERO GEKARA 3RD DEFENDANT

OTAO GEKARA 4TH DEFENDANT

RULING

1. The Defendants have moved this court through an Application dated 12/3/2024 seeking that the court strikes out the suit for the same has no reasonable cause of action in that according to the Defendants/ Applicants, the matter squarely lies within the realm of a succession court. The grounds upon which the Application is made is that the proprietor of the subject matter of the suit – L.R. No. Ekerubo Settlement Scheme/36, Josephine Kwamboka Gekara is deceased and that the suit filed by the original registered owner Nahason Gekara Okero has abated. The Applicants contend that the 1st and 2nd Defendants had filed Kisii Civil Suit No. 59 of 2015 and 58 of 2015 respectively and that the 1st Defendant’s brother, Daniel Arita Gekara filed Civil Suit No.377 of 2012 in Kisii High Court against Nahason Gekara and Josephine Gekara who are now deceased. The 3 suits were all consolidated into this suit. The suit against Nahason and Josephine Gekara has now abated.
2. In the Replying Affidavit by the Plaintiff/Respondent herein the same sworn on the 3/4/2024 admits that he is the legal representative of the Estate of his father, the late Nahason Gekara Okero who died on 20/6/2021 as shown in the death certificate attached to the Affidavit. He was the registered owner of the said property. From the said Affidavit the Plaintiff has brought to light that all the parties herein are sons of the late Nahason Gekara Okero (their father) who had 2 houses one siring the Plaintiff through



Josephine Kwamboka Gekara and the late Monica Gekara being the mother to the Defendants. L.R. No. Ekerubo Settlement Scheme/36 was sub-divided into Ekerubo Settlement Scheme/187, 188 and 189. Title Deed for L.R. No. Ekerubo Settlement Scheme/36 was issued to Nahason on 11/3/2010 before he died on 20/6/2021, 11 years later.

3. Although it is not clear as to who the Title Deed was cleared as the Green Card issued on 7/3/2024 does not indicate there is attached to the Affidavit a Mutation form for this case dated 2/12/2010 before the late registered owner Nahason Gekara Okero died and the same year the Title Deed had been issued 9 months earlier. It is not clear why none of the parties herein has given evidence in this Application to show when the new Titles Ekerubo Settlement Scheme/187, 188 and 189 were issued and to who and whether they were indeed issued or not. But in his further List of Documents, the Plaintiff has filed certificates of official searches showing that Ekerubo Settlement Scheme/187 and 188 belong to Nahason Gekara Okero and Josephine Kwamboka Gekara respectively with effect from 2/7/2013. The searches also attest that both are sub-divisions of Ekerubo Settlement Scheme/36.
4. In Keroka PM CC Succession Cause No. 36 of 2021 in the Estate of Nahason Gekara Okero the only Asset of the Deceased is Ekerubo Settlement Scheme/36. The same was gazette on 11/2/2022. This information is in the further list of documents by the Plaintiff. Nothing is said about the determination of the cause or what became of the same after the gazette. Nor has there been any reason as to why a closed Title becomes a subject of succession and the resultant Titles are left out. On 25/5/2022, this court made an order that any further proceedings in this suit must be halted awaiting the determination of the Successions Cause. I gave reasons for the same. I equally made an order that this matter is stayed until the determination of the said succession cause. On 21/12/2023 the Plaintiff told the court that the Keroka PM CC Succession Cause No. 36 of 2021 was determined and that the said court held it had no jurisdiction. No documents were availed in court to prove this but again on 7/3/2024 the Defendant's Advocate said that this were the case. No reasons were advanced for want of jurisdiction by Keroka PM'S Court.
5. Having said as above I feel that no good reasons have been advanced to show that this court has no jurisdiction to hear and determine this suit and the Application dated 12/3/2024 is hereby dismissed. Costs in the cause. I order that this matter does proceed into full hearing with expedition.

Ruling dated, signed and delivered at Nyamira this 22nd day of May, 2024.

MUGO KAMAU

JUDGE

In the presence of: -

Court Assistant – Brenda

Plaintiff's Counsel – N/A.

1st and 3rd Defendants.

2nd and 4th Defendants – N/A.

