



Singombe (Suing as the Administrator of the Estate of Sospeter Manyisa Orwendo (Deceased)) v Orwenyo & another; Nanok (Interested Party) (Land Case E007 of 2024) [2024] KEELC 7180 (KLR) (23 September 2024) (Ruling)

Neutral citation: [2024] KEELC 7180 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
LAND CASE E007 OF 2024
EM WASHE, J
SEPTEMBER 23, 2024**

BETWEEN

**DRUCILLA KERUBO SINGOMBE APPLICANT
SUING AS THE ADMINISTRATOR OF THE ESTATE OF SOSPETER MANYISA
ORWENDO (DECEASED)**

AND

**DAVID ORWENYO 1ST DEFENDANT
RODAH MOMANYI 2ND DEFENDANT**

AND

HON JOSPHAT NANOK INTERESTED PARTY

RULING

1. The 1st and 2nd Defendants (hereinafter referred to as “the Applicants”) have filed a Preliminary Objection dated 15.05.2024 (hereinafter referred to as “the present P.O”) against the Plaintiff’s (hereinafter referred to as “the Respondent”) Plaint dated 12.03.2024 on the following grounds; -
 - a. The entire suit is a nullity, frivolous, vexatious and an abuse of the Court process.
 - b. The Plaintiff lacks locus standi to institute the suit.
 - c. The suit property primarily relates to the estate of the deceased person and all the issues therein shall be well ventilated in a succession cause.
 - d. The Court lacks jurisdiction to entertain the suit.
2. The Applicants therefore seek this Court to dismiss the Plaint dated 12.03.2024 with costs.



3. The present P.O was duly served on the Respondent indicated his wish to oppose the same.
4. The Court then directed parties to prepare, file and serve their submissions regarding the present P.O.
5. The Applicants filed their submissions dated 19.06.2024 and pleaded as follows; -
 - a. The Applicants stated that indeed the property under litigation is known as LR.No.Transmara /Moyoi /344.
 - b. The property known as LR.No.Transmara /Moyoi /344 previously belonged to one Sospeter Manyisa Orwenyo who passed away on 10.09.2023.
 - c. Under Section 3 (1) of the Succession Act, an administrator is defined as a person who is granted Letters of Administration by a competent Court.
 - d. Further to that, the Applicants state that Section 51 of the Succession Act also provides the format of how an Application for Letters of Administration should be made by a party seeking for the same.
 - e. On the other hand, Section 49 of the Succession Act provides for the Territorial Jurisdiction of Magistrates who handle applications for letters of Administration.
 - f. According to the Applicants, the Respondent was issued with Letters of Administration Ad-Litem dated 06.03.2024 by the Resident Magistrate in Ngong.
 - g. In the Applicants' view, the Resident Magistrate pecuniary jurisdiction according to Section 48 of the Succession Act deals with succession matters that do not exceed the gross value of KShs 100,000/-.
 - h. In addition to the above pecuniary jurisdiction, the territorial jurisdiction of the Letters of Administration Ad-Litem only applies within the territorial jurisdiction of the Court which issued the same.
 - i. In the present suit, the property known as LR.No. Transmara /Moyoi /344 is valued over KShs 1,000,000/- and therefore excessive of the pecuniary jurisdiction of the Magistrate that issued the same on the 06.03.2024.
 - j. Further to that, the property known as LR.No.Transmara /Moyoi /344 is situated in Kilgoris Area which is outside the territorial jurisdiction of Ngong Law Court which issued the Letters of Administration Ad litem.
 - k. In essence, the Applicants submitted that the Letters of Administration Ad-Litem issued on the 06.03.2024 by the Ngong Law Court were devoid of legal backing and can not be used to institute this suit.
 - l. Lastly, the Applicants stated that the issues in contention within the Plaint dated 12.03.2024 relate to the succession of the estate belonging to one Sospeter Manyisa Orwenyo and therefore should be handled before the High Court and not Environment & Land Court.
6. The Respondent in opposition to the submissions made hereinabove filed their submissions dated 03.06.2024 of which they submitted as follows; -
 - a. The Respondent also confirmed that the property known as LR.No.Transmara /Moyoi /344 once belonged to one Sospeter Manyisa Orwenyo.



- b. The person known as Sospeter Manyisa Orwenyo was the Respondent’s husband who passed away on the 10.09.2023.
 - c. Upon the demise of Sospeter Manyisa Orwenyo on the 10.09.2023, a burial dispute arose but was later resolved and the deceased lied to rest.
 - d. After the burial of Sospeter Manyisa Orwenyo, the Respondent obtained Letters of Administration Ad-Litem dated 06.03.2024 from the Ngong Law Court.
 - e. In the process of investigating and identifying the assets of Sospeter Manyisa Orwenyo, the Respondent discovered that the property known as LR.No.Transmara /Moyoi /344 had been disposed off by the 1st Applicant through an alleged Power of Attorney.
 - f. It is on the basis of this discovery that the Respondent instituted the present suit before this Court as the property known as LR.No.Transmara /Moyoi /344 is no longer the asset of Sospeter Manyisa Orwenyo but that of the Interested Party.
 - g. The Respondent further stated that the Letters of Administration Ad-Litem issued on the 06.03.2024 were lawful and valid and do not need to be re-issued by the High Court or any other Court within the jurisdiction of the property known as LR.No.Transmara /Moyoi /344.
 - h. In the closing remarks, the Respondent submitted that the present suit is within the rightful Court and the Letters of Administration Ad-Litem issued on the 06.03.2024 by Ngong Law Court grant her the locus standi to bring this suit and prosecute the same.
7. Before this Court can embark to discuss the present P.O, it is point to understand the scope of what constitutes a Preliminary Objection.
8. In the case of Mukhisa Biscuits Manufacturing Limited -versus- Westend Distributors (1969) EA 696, the Court observed as follows; -

“A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.

“a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.

9. The Court has indeed carefully perused the present P.O as well as the submissions by both parties and the following point of law arise for determination; -

Issue No.1- Do The Letters Of Administration Ad-litem Dated 06.03.2024 Issued By Ngong Law Court Give Locus Standi In Favour Of The Respondent To Institute These Legal Proceedings?

Issue No. 2 - Does This Court Have Jurisdiction To Entertain & Determine The Dispute Between The Parties Herein?



Issue No. 3- Is the Present Po. Merited?

Issue No. 4- Who Bears The Costs Of The Present Po?

10. The issues for determination having been duly outlined hereinabove, the same will now be discussed and determined as provided below.

Issue No.1- Do The Letters Of Administration Ad-litem Dated 06.03.2024 Issued By Ngong Law Court Give Locus Standi In Favour of the Respondent To Institute These Legal Proceedings?

11. The 1st and 2nd Applicants have raised a point of Law to the effect that the power of Attorney issued on the 06.03.2024 by the Ngong Law Courts to the Respondent in regards to the Estate of Sospeter Manyinsa Orenyo (Deceased) were irregular and unlawful hence cannot give locus standi to institute these proceedings.
12. The irregularity of the letters of administration ad-litem issued on the 06.03.2024 the Ngong Law Courts relates to peculiarly and territorial jurisdiction.
13. As regards the peculiarly jurisdiction the 1st and 2nd Applicants have relied on Section 48 and 49 of the Succession Act.
14. According to the 1st and 2nd Applicant, the jurisdiction of a Resident Magistrate as appertains administration of an Estate by a deceased person is only limited to assets not exceeding Kshs.100,000/=.
15. However, the property known as L.R No.Transmara /Moyoi /344 is valued at over 1 million shillings which then is in excess of the peculiarly jurisdiction for a Resident Magistrate.
16. The Court has indeed looked at the letters of administration ad-litem issued on the 06.03.2024 and wish to point out that the same was issued by the Senior Principal Magistrate and not a Resident Magistrate as alleged in the Applicant's submission.
17. Secondly, the issue of the value of the property known as L.R No. Transmara /Moyoi /344 was not an issue for determination during the proceedings that resulted to issuance of the letters of administration.
18. Letters of administration ad-litem are usually issued for specific reasons which include instituting legal proceedings with a view of defending or recovering assets belonging to a deceased person.
19. The proceedings therefore do not have any peculiarly value which can be attached to the subsequent proceedings that are initiated using the said documents.
20. Even if this court was to make a finding that the Senior Principal Magistrate Court at Ngong exceeded its peculiarly jurisdiction in issuing the letters of administration dated 06.03.2024 to the Respondent this court does not have the jurisdiction to review and/or sit on appeal from proceedings and determinations arising from the Succession Act which was applied by the court.
21. In other words, this court cannot interfere and/or make any adverse orders against the letters of administration issued to the Respondent on the 06.03.2024 on account of peculiarly jurisdiction.
22. The second aspect on this point of law raised by the Applicant is that the Ngong Law Court didn't have the jurisdiction to issue the letters of administration ad-litem dated 06.03.2024 for purposes of instituting proceedings in Kilgoris Law Courts where the property known L.R No.Transmara / Moyoi /344 is located.
23. According to the Applicants, the letters of administration ad-litem issued on 06.03.2024 by the Ngong Law Courts can only be used within the jurisdiction of Ngong Law Courts.



24. The Applicants sought to rely on Section 49 of the Law Succession Act to support this position.
25. The court has carefully read Section 49 of the Succession Act and its interpretation is that letters of administration ad-litem and/or the substantive succession proceedings should be filed within the last known place of residence of the deceased person.
26. In this particular case, the deceased person last known place of residence is Ngong.
27. It therefore goes without saying that the Court which has the initial jurisdiction to handle either an application for letters of administration ad-litem or the substantive succession petition is Ngong Law Courts or the nearest Law Courts.
28. Once the Court within the jurisdiction of the deceased last known place of residence issues letters of administration ad-litem or receives the substantive petition, the administrator of that Estate is not limited to institute proceedings outside the jurisdiction of that particular court.
29. The argument by the Applicants that the letters of administration ad-litem issued on 06.03.2024 to the Respondent are limited to only the jurisdiction of Ngong Law Courts is in the Court's view incorrect as it would then mean that an administrator would have to file various letters of administration ad-litem in different jurisdictions if the deceased person had assets all over the country.
30. It is this court's humble view that this was not the intention of the Succession Act and has not been the practice of the Law Succession.
31. In conclusion, this court again makes a finding that the letters of administration ad-litem issued to the Respondent on the 06.03.2024 are lawful and regular.
32. In essence this court therefore makes a finding that the Respondent has locus standi to institute the proceedings before this court pursuant to the letters of administration ad-litem issued by the Ngong Law Courts on the 06.03.2024.

Issue No. 2 - Does This Court Have Jurisdiction To Entertain & Determine The Dispute Between The Parties Herein?

33. The second point of law raised by the Applicant is the issue of jurisdiction of this court to hear and determine the Plaintiff dated 12.03.2024.
34. According to the Applicant the property known as L.R No. Transmara /Moyoi /344 was the property of One Sospeter Manyinsa Orwenyo.
35. The person known as Sospeter Manyinsa Orwenyo passed away on 10.09.2023.
36. It therefore goes without saying that the property known as L.R No. Transmara /Moyoi /344 should be administered through the Succession Act as part of the assets of the deceased.
37. The Respondent on the other hand is on the view that this court is couched with the necessary jurisdiction to hear and determine the issues raised in the plaintiff dated 12.03.2024.
38. The Respondent's argument is that the 1st and 2nd Applicant's actions of signing an agreement for sale dated 15.08.2023 alienating and/or selling of the property known as L.R No. Transmara / Moyoi /344 to the interested party removed this property from the assets of the deceased which are to be administered under the Succession Act.



39. The Respondent therefore insisted that this court is the rightful court to hear and determine the dispute regarding the sale and/or ownership of the property known as L.R NO.Transmara / Moyoi /344.
40. For this court to make a determination of this issue of law, it is important to understand the ownership of the property known as L.R NO.Transmara /Moyoi /344.
41. It is not in dispute based on the pleadings by the parties that the property known as L.R NO.Transmara /Moyoi /344 is registered in the name of the deceased Sospeter Manyinsa Orwenyi.
42. However, from the Applicant's statement of defence and documents presented in court there is power of Attorney dated 17.10.2022 issued by Sospeter Manyinsa Orwenyo to the 1st Applicant.
43. Based on this power of Attorney dated 17.10.2022 the 1st Applicant sold the property known as L.R NO.Transmara /Moyoi /344 to the interested party on 15.08.2023.
44. A perusal of the agreement for sale dated 15.08.2023 shows that the completion date of the said agreement was 15.11.2023.
45. Unfortunately, Sospeter Manyinsa Orwenyo who is the donor of the specific power of Attorney dated 17.10.2022 passed away on 10.09.2023.
46. The effect of the death of the donor Sospeter Manyinsa Orwenyo on the 10.09.2023 extinguished the 1st Applicant's powers to deal with the property known as L.R NO.Transmara /Moyoi /344.
47. In other words, it is clear that the property known as L.R NO.Transmara /Moyoi /344 had not been transferred to the interested party as at 10.09.2024.
48. It therefore without saying that the property known as L.R NO.Transmara /Moyoi /344 after the 10.09.2024 can only be dealt with through the administrator of the Estate of the late Sospeter Manyinsa Orwenyo for the ownership rights vested in his own estate.
49. This court's considered view is that it does not have jurisdiction to hear and determination the plaint dated 12.03.2024 as the said property should be subjected to the proceedings of the Succession Act and the interested party is at liberty to lodge his interest over the property known as L.R NO.Transmara / Moyoi /344 which the High Court will make a determination regarding such an interest.

Issue No. 3- Is The Present Po. Merited?

50. Based on the determination on issued No.2 this court hereby makes a finding that it does not have a jurisdiction to hear and determine the Plaint dated 12.03.2024 and the present P.O is merited on this ground.
51. In fact, the Respondent's prayer No.A in the Plaint dated 12.03.2024 is to have the property known as L.R NO.Transmara /Moyoi /344 subjected to Succession as part of the Estate of the late Sospeter Manyinsa Orwenyo.
52. If this is one of the Respondent's prayers it therefore goes without saying that this court does not have jurisdiction to deal with the same property as called upon by the Respondent.

Issue No. 4- Who Bears The Costs Of The Present Po?

53. The last issue is who should bear the cost of the present period.



54. The court is of the view that each party should bear their own costs as the Applicants and the Respondents are family members and costs would not assist in resolving the dispute between these parties to save to aggravate the dispute.

Conclusion

55. In conclusion, this court hereby makes the following orders in determination of the preliminary objection dated 15.05.2024: -

- A. The preliminary objection is merited on the grounds that this court does not have jurisdiction to hear and determine the plaint dated 12.03.2024.
- B. The plaint dated 12.03.2024 is forthwith struck out.
- C. Each party shall bear its own costs.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 23RD SEPTEMBER, 2024.

EMMANUEL.M.WASHE

JUDGE

In the presence of:

Court Assistant:mr Ngeno

Plaintif/respondent: Ms. Mongare

Defendant/applicant: Mr. Onderi H/b Omwenga For 1st And 2Nd Defendant/applicant

