



Muriuki (Suing as the ad litem administrator of the Estate of Mutura Muriuki – Deceased) v Waruinge (Sued in his own capacity and as the legal representative of the Estate of Waruinge Muriuki – Deceased) & 3 others (Environment & Land Case 14 of 2022) [2023] KEELC 337 (KLR) (20 January 2023) (Ruling)

Neutral citation: [2023] KEELC 337 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 14 OF 2022**

**BM EBOSO, J
JANUARY 20, 2023**

BETWEEN

JANE NJERI MURIUKI (SUING AS THE AD LITEM ADMINISTRATOR OF THE ESTATE OF MUTURA MURIUKI – DECEASED) APPLICANT

AND

PETER KARIUKI WARUINGE (SUED IN HIS OWN CAPACITY AND AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF WARUINGE MURIUKI – DECEASED) 1ST RESPONDENT

PETER MUNYUI MBUTHIA (SUED IN HIS OWN CAPACITY AND AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF MBUTHIA MURIUKI – DECEASED) 2ND RESPONDENT

LAND REGISTRAR, KIAMBU 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

RULING

1. The subject of this ruling is the 2nd respondent’s preliminary objection dated April 28, 2022, through which the 2nd respondent invited this court to strike out this suit on the ground that the applicant, Jane Njeri Muriuki, lacks the locus standi [the legal capacity] to bring the suit on behalf of the estate of the late Mutura Muriuki [the deceased]. The preliminary objection was canvassed through brief oral submissions tendered in the virtual court. The applicant opposed the preliminary objection through brief oral submissions.
2. A brief background to the preliminary objection is that, on or about April 25, 2022, the applicant took out an originating summons dated April 4, 2022, contending that she was the Ad Litem Administrator



- of the estate of the late Mutura Muriuki who was one of the three co-registered proprietors of land parcel number Kiambaa/Waguthu/2xx, measuring approximately 5.3 acres and held on freehold basis. The three registered co-owners were siblings and are all deceased. She identified the three siblings as: (i) the late Mutura Muriuki; (ii) the late Waruingi Muriuki; and (iii) the late Mbuthia Muriuki. It was her case that the two respondents named in this originating summons were the respective legal representatives of the late Waruingi Muriuki and the late Mbuthia Muriuki.
3. The applicant further contended that the three deceased siblings owned the suit property in equal shares and that there existed a trust between them in relation to the suit property. She added that the estate of the late Mutura Muriuki had discovered illegal intermeddling in the suit property through alterations to the parcel register to reduce the share of the late Mutura Muriuki to less than one third (1/3).
 4. Consequently, the applicant invited the court to grant her the following verbatim reliefs:
 - a. A declaration that a trust existed and still exists in respect of Land Parcel No. Kiambaa/ Waguthu/2xx, and that by operation of law, the applicant who is the Ad Litem Administrator of the Estate of the late Mutura Muriuki, is entitled to one third (1/3) of the said parcel of land.
 - b. An order for determination of that trust and 1/3 (one third) of the interest in the aforementioned parcel of land be transferred to the applicant to hold in trust of the beneficiaries of the Estate of the late Mutura Muriuki.
 - c. That the court be pleased to grant any other relief that it may deem just and equitable in the interest of justice.
 - d. That the costs of these proceedings be borne by the respondents.
 5. The exact date when the originating summons was served is not clear. What is clear from the replying affidavit sworn on April 28, 2022 by Peter Munyui is that, on April 27, 2022, the firm of JK Gachie & Co Advocates prepared a miscellaneous application [notice of motion] which was filed at the Kiambu Chief Magistrate Court, in which they named one Mary Wanjiku Mutura as a respondent and sought orders compelling her to execute all necessary forms for the transfer of the suit property through transmission. There is, however, nothing in the papers annexed to the replying affidavit in the present suit indicative that the said Mary Wanjiku Mutura [whom Peter Munyui Njoroge sued in Kiambu CMC E & L Misc Application No 50 of 2022] holds a valid grant issued under the [Law of Succession Act](#) in relation to the estate of Mutura Muriuki.
 6. In addition to the above replying affidavit, the 2nd respondent brought the preliminary objection which is the subject of this ruling. Urging the court to uphold the preliminary objection and strike out the suit, Mr Gachie, counsel for the 2nd respondent, submitted that the applicant lacked capacity to bring the suit. Counsel contended that although the applicant holds a grant issued to her under the [Law of Succession Act](#) in relation to the estate of the late Mutura Muriuki, the said Grant is invalid because the late Mutura Muriuki's widow is alive. Counsel contended that the applicant was not eligible to apply for the grant because she is only a daughter-in-law of the deceased. Counsel relied on the provisions of Section 39 of the [Law of Succession Act](#) and contended that the widow of the late Mutura Muriuki is the one who should have applied for the grant. Counsel urged the court to strike out the suit.
 7. Opposing the preliminary objection, Mr. Karanja, counsel for the applicant submitted that the applicant held a duly issued grant which had not been challenged by the family of the late Mutura Muriuki [the deceased]. Counsel added that owing to the age and poor health of the widow of the late



Mutura Muriuki, the family of the deceased opted to have the applicant as the administrator of the deceased estate. Counsel added that this court was not the right forum for challenging the grant held by the applicant. Terming the preliminary objection as baseless, counsel urged the court to dismiss it.

8. I have considered the gist of the preliminary objection together with the parties' rival submissions. I have also considered the relevant legal framework and jurisprudence. The single question to be determined in the preliminary objection is whether the applicant has the legal capacity to institute this suit. I will dispose the question through brief analysis and determination.
9. Counsel for the objector anchored his submissions entirely on the provision of Section 39 of the [Law of Succession Act](#) which provides as follows:
 - “(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority-
 - (a) father; or if dead
 - (b) mother; or if dead
 - (c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
 - (d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
 - (e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.
 - (2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.”
10. Counsel contended that the widow of the late Mutura Muriuki is the one who should have applied for the grant. I have reflected on the gist of the objection.
11. First, it does emerge from the oral submissions of counsel that the objector is inviting this court to invalidate the Grant of Letter of Administration held by the applicant. The jurisdiction to invalidate the Grant is, by dint of the framework in the [Law of Succession Act](#), vested in the court that issued the Grant or any other court exercising review or appellate jurisdiction over the issuing court. The Environment and Land Court is not the issuing court and has no review or appellate jurisdiction over the issuing court. Secondly, the platform for seeking an invalidation [revocation] order is an application initiated within the framework of the Act. Put differently, this court is not the succession court that issued the Grant. This court is not the court contemplated to issue or revoke a grant under the [Law of Succession Act](#).
12. Even if I were to be wrong on my above interpretation of the law on jurisdiction, I do not think Section 39 of the [Law of Succession Act](#) on which counsel for the objector anchored the objection is the correct framework that governs administration of intestate estates. The correct framework is Section 66 of the [Law of Succession Act](#) which provides as follows:

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“ 66. When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

- (a) surviving spouse or spouses, with or without association of other beneficiaries;
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- (c) the Public Trustee; and
- (d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

- 13. Suffice it to state that the above framework vests in the succession court wide final discretion to determine the person to appoint as an administrator of an intestate estate. It does not preclude the succession court from appointing a daughter-in-law as an administrator of the estate of a father-in-law.
- 14. Consequently, my finding on the single issue in the preliminary objection dated April 28, 2022 is that, as long as the Grant issued to Jane Njeri Muriuki has not been revoked by the relevant court, or otherwise invalidated, the said Grant vests in her the legal capacity to institute this suit on behalf of the estate of the late Mutura Muriuki. She therefore has the locus standi [the legal capacity] to bring this suit.
- 15. The result is that I do not find merit in the preliminary objection dated April 28, 2022. The said preliminary objection is dismissed. The objector shall bear costs of the preliminary objection.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 20TH DAY OF JANUARY 2023

B M EBOSO

JUDGE

Mr Gachie for the 2nd Respondent

Court Assistant: Ms Osodo

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