



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 54 OF 2017

FORMERLY MERU ELC CASE NO.285 OF 2016

EMILIO MPUTHIA MUTIRIA.....PLAINTIFF

VERSUS

BASILIO GITONGA KIRIMI SEBASTIAN..... 1ST DEFENDANT

WILFREND KIRUJA KATHENDU.....2ND DEFENDANT

ELIAS NDEKE MUCHEKE.....3RD DEFENDANT

LAWRENCE KIBAARA GITONGA.....4TH DEFENDANT

JOSEPH MWIRIGI KIRIMI.....APPLICANT

RULING

1. This Notice of Preliminary Objection is dated **12th April, 2017** and has the following grounds:-

1. The plaintiff has no locus standi.
2. The suit is incompetent as the plaintiff has not taken out letters of Administration for Domisian Mutiria J. Muthomi.
3. The Court has no jurisdiction to entertain the suit as no letters of administration have been obtained by the plaintiff.
4. The Application is bad in law, incompetent, and ill-conceived as there is no Privity of contract between the Applicant and the Respondents.
5. The suit as currently constituted is an abuse of the court process in that it is based on untrue statement of law and fact in regard to ownership.
6. The suit is against Public Policy.
7. The suit is bad in law as the same is an abuse of the court process and the same be struck out under Order 2 rule 15 (d) Civil Procedure Rules 2010.

2. The Preliminary Objection was canvassed orally on 12th July, 2017.

3. In his submissions on behalf of the defendants Mr. Mutani was categorical that this court has no jurisdiction to entertain this suit bearing in mind that the subject in dispute, to wit, Land Parcel No. MWIMBI/NTUNENI/356 is registered in the name of a person called DOMISIANO MUTIRIA J. MUTHOMI who is deceased. He asserted that for any suit to be brought in the name of that person a litigant must hold letters of administration.

4. Mr. Mutani drew the attention of the court to Annexure “EMMI” which shows that the registered owner of the suit land is DOMISIANO MUTIRIA J.MUTHOMI. He further told the court that the death of the registered owner of the land had been pleaded in paragraphs 3 and 4 of the defence dated 21.3.2017.

5. Mr. Mutani also argued that if parcel No. 356 is registered in the name of a person other than the plaintiff, then the plaintiff had no locus standi and there existed no privity of contract between the plaintiff and the defendants.

6. Mr Mutani further told the court that this suit had been brought to court through misrepresentation of law and facts. He pointed out that whereas the records proffered in court showed that parcel NO. MWIMBI/NTUNENI/356 was not registered in the name of the plaintiff, the plaintiff had nevertheless averred in paragraph 4 of the plaint that he is the registered proprietor.

7. In support of the defendants’ assertions, Mr Mutani proffered the following 2 authorities:

(a) TROUISTIK UNION INTERNATIONAL & ANOTHER (APPELLANTS)

AND

MRS JANE MBEYU & ANOTHER (APPELLANTS)

NAIROBI COURT OF APPEAL CA. NO. 145 OF 1990.

(b) THE MV “LILIAN S”, [1989] KLRI.

8. For the plaintiff Mr. Muriithi replied that the plaintiff had brought this suit to court on behalf of himself and not on behalf of his deceased father. He, therefore, told the court that the plaintiff had no duty to take up letters of administration before filing this suit.

9. Mr. Muriithi told the court that he would show that parcel NO.MWIMBI/NTUNENE/356 was not the only land in dispute but that there were four more parcels of land involved in this dispute. He, therefore, asserted that it was improper for the three defendants to restrict themselves to only one parcel of land.

10. Mr. Muriithi continued to state that the issue of privity of contract raised in the Preliminary Objection had no relationship with the claim raised by the plaintiff since the plaintiff’s claim was not based on contract.

11. Mr. Muriithi argued that grounds 5, 6, and 7 of the Preliminary Objection were vague and therefore not pure points of law.

12. Mr. Muriithi urged this court to find that it had jurisdiction to handle this suit and to dismiss the Preliminary Objection.

13. Mr Mutani countered the plaintiff’s assertions saying that this suit was based on only one parcel of land No.356 as that was the parcel of land that had a dispute before the District Land and Settlement Officer (DLASO). He invited the court to look at paragraph 4 of the plaint and see that all the other parcels referred to by Mr. Muriithi had emanated from this one plot.

14. Mr Mutani reiterated that he had raised pure points of law and explained that where issues of fact had

been pleaded, they were based on what was included in the plaint. He opined that if the plaintiff was dealing with other parcels other parcel No. 356, then he should have sued his clients directly and then faced them “man to man” (perhaps to be gender sensitive, nay gender correct, Mr. Mutani should have used the phrase “person to person”).

15. Finally, Mr. Mutani told the court that the moment the court established that DOMISIANO MUTIRIA J. MUTHOMI was deceased, the court should reject the whole suit so that if the plaintiff wants to sue his clients, the defendants, he can go to them directly.

16. I have carefully considered the issues canvassed by the parties in this Preliminary Objection. Their submissions in support of their propositions were spirited and forcefully put forward. I have also considered the two authorities proffered by Mr. Mutani on behalf of the defendants.

17. The authorities proffered by Mr. Mutani are good law and apposite authorities in the right circumstances. Of course, no one shoe size fits all. However given the apposite facts, the principle of stare *decicis* is a hallowed precept in the judicial realm.

18. I do find that this court has jurisdiction to handle all environment and land matters properly filed in it, including this suit. This is why this court has jurisdiction to handle this Preliminary Objection. Because of this jurisdiction, this court has power to uphold a Preliminary Objection if it finds that the Preliminary Objection is grounded on a pure point or points of law.

19. The defendants main ground is that the plaintiff ought not to have filed this suit if he did not have the requisite facilitative tools in place, the key tool being letters of administration.

20. Although Mr. Muriithi asserts that the plaintiff had no duty to obtain letters of administration because he brought this suit on his own behalf, he was unable to divorce the plaintiff from ownership of the suit property by his father. The prayers in the plaint betray the plaintiff. They are:

(a) An order of rectification of the register by cancellation of the 1st – 4th defendants as the registered owners of land parcel Numbers MWIMBI/NTUNENI/447, 448, 449 and 450 respectively and the said land parcels to be consolidated with land parcel number MWIMBI/NTUNENE/356.

(b) Costs of the suit and interest at court rates.

21. It is pellucid that he wants the cited parcels incorporated in parcel No. MWIMBI/NTUNENE/356 which is registered in the name of DOMISIANO MUTIRIA J. MUTHOMI (deceased). Should this prayer succeed, the land will be registered in the name of his deceased father. He does not want the land registered in his name. Then how can he claim to have filed this suit on his own behalf? This would be a surreal proposition. The unfolding scenario would be veritably supercalifragilisticexpialidocious.

22. By law and by precedent as has been eruditely elaborated by the case of **TROUISTIK UNION INTERNATION & ANOTHER (APPELLANTS) AND MRS JANE MBEYU & ANOTHER (RESPONDENTS)** (*op.cit*) for a litigant to file a suit concerning the property of a deceased person, letters of administration must be obtained. In this case, the plaintiff has not done so. It, therefore, means that this suit is improperly before this court. This finding confirms that the defendants’ Preliminary Objection has raised a pure point of law.

23. I do find that ground 2 of the Preliminary Objection raises a pure point of law which requires this court to dismiss this suit outrightly. I do not find the need to deal with the other grounds of opposition.

24. In the circumstances, I dismiss this suit.

25. Costs are awarded to the defendants.

26. It is so ordered.

Delivered in open court at Chuka this **31st day of July, 2017** in the presence of:

CA: Ndegwa

Mutani for the defendants

Plaintiff and his advocate NOT present

P.M. NJORGE

JUDGE