



**Mutiso v Patel (Civil Case E008 of 2021) [2022] KEHC 11783 (KLR) (18 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11783 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CIVIL CASE E008 OF 2021  
LM NJUGUNA, J  
JULY 18, 2022**

**BETWEEN**

**ELIZABETH NDUKU MUTISO ..... PLAINTIFF**

**AND**

**KALPESH LALJI PATEL ..... DEFENDANT**

**RULING**

1. Before this court is a preliminary objection dated October 12, 2021 on grounds that:
  - i) This court lacks jurisdiction to hear and determine this suit because it is not vested with the jurisdiction to hear and determine land dispute and thus the suit is inconsistent with the provisions of section 13 of the [Environment and Land Court Act](#) No. 11 of 2011.
  - ii) The suit is incompetent, being inconsistent with the provisions of sections 15 of [Civil Procedure Act](#).
  - iii) The plaintiff lacks locus standi to institute civil proceedings on behalf of a deceased person without limited letters of administration ad litem.
  - iv) The suit is fatally defective for lack of both territorial and pecuniary jurisdiction.
2. When the preliminary objection came up for hearing, the court directed that the same be canvassed by way of written submissions of which, only the defendant complied with the said directions.
3. The defendant submitted that the plaintiff moved this court for injunctive relief to allegedly stop the defendant from evicting her from her home and for annulment of an agreement of sale of the suit property. That the plaintiff sold the suit property to the defendant with full disclosure of all material information pertaining to the property as the registered owner had passed on, thus the agreement was pending execution upon completion of a succession cause which was pending at the time of signing the sale agreement. The defendant submitted that this court lacks jurisdiction to hear and determine this suit since it is not vested with the jurisdiction. That this court lacks both territorial and pecuniary



jurisdiction as the suit land is worth Kshs. 10,000,000/= and further, the cause of action arose beyond the territorial jurisdiction of this court as the subject land is located within the jurisdiction of Wang'uru Law Courts while the defendant resides in Kerugoya where the sale agreement was signed. Reliance was placed on section 15 of the Civil Procedure Code. Further that, this court is not vested with the jurisdiction to hear and determine land disputes and as such, the suit is inconsistent with the provisions of section 13 of the Environment and Land Act No. 11 of 2011 and equally article 162 of *the constitution*. Reliance was placed on the case of *National Land Commission vs Afrison Export Import Limited & others* [2019] eKLR.

4. In regards to whether the plaintiff/applicant has locus to prosecute the suit herein, it was submitted that the plaintiff instituted the proceedings on behalf of her late husband without obtaining the requisite limited grant of letters of administration ad litem as required by law. Reliance was placed on rule 14 of the 5<sup>th</sup> Schedule to the LSA and on the cases of *Elijah Chepkwony Chirchir v Joel Kipngeno Rop & 5 others* [2019] eKLR and *Beatrice Wambui Kiarie v Beatrice Wambui & 9 others* (2018). In the end, the defendant prayed that the suit be dismissed with costs to him.
5. I have considered the preliminary objection, and the submissions filed by the defendant herein.
6. It is important to note that, with the enactment of the *Environment and Land Court Act* of 2012, the jurisdiction to determine disputes relating to ownership and use of land is bestowed on the Environment and Land Court. It is my considered view as such that issues arising out of the instant application are not within the jurisdiction of this Honourable Court. [See the decision of the Supreme Court in the case of *Nasra Ibrahim Ibren v Independent Electoral and Boundaries Commission & 2 others* Supreme Court Petition No 19 of 2018- paragraph 40).

This is for the reason that where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing as jurisdiction must be acquired before a case can be heard.

[See the case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR].

7. Similarly, in the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR, where the Supreme Court held as hereunder;

A court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings.

[Also see articles 165(5) and 162(2) of *the constitution*; and section 13 of the *Environment and Land Court Act*].

8. From a reading of the above sections/articles, it is clear that *the Constitution* intended to create special courts with special jurisdiction in land matters. That jurisdiction is not therefore donated to the High Court.



9. Sections 11, 12, 13, 14 and 15 of the *Civil Procedure Act* makes provision on the place of suing; in relation to this matter, section 12 provides as follows: -

“Subject to the pecuniary or other limitations prescribed by any law, suits—

a. ....

b. ....

c. ....

(d) For the determination of any other right to or interest in immovable property;

(e) ....

(f) ....

10. Therefore, where the property is situate in a given county, the suit thus shall be instituted in the court within the local limits of whose jurisdiction the property is situate.

11. The defendant has submitted that the cause of action arose beyond the territorial jurisdiction of this court given that the subject land is located within the jurisdiction of Wang’uru while the defendant resides in Kerugoya. In the same breadth, that the pecuniary value of the suit land is Kshs 10,000,000. Upon perusing the record and specifically the sale agreement in contention, I note that the property is situated in Embu County and more specifically LR Mbeere /wachoro/1356 and the amount of money the defendant paid for the suit land is Kshs 11,250,000.

[See *Magistrates Court Act* No 26 of 2015; *Paulo Anyanzwa Kutekha v Steel Structures Limited* [2018] eKLR].

12. In reference to the third ground that the plaintiff lacked locus standi to institute the suit herein on behalf of the deceased, as she had not taken out letter of administration in respect of the estate or an ad litem, in the case of *Julian Adoyo & another vs Francis Kiberenge Bondeva* (Supra), Mrima J discussed the importance of taking out the limited grant before instituting a suit and stated that;

“A party without locus standi in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a court acting without jurisdiction since it all amounts to null and void proceedings. It is also worth-noting that the issue of locus standi becomes such a serious one where the matter involves the estate of a deceased person since in most cases the estate involves several other beneficiaries or interested parties.”

13. Similarly, in *Re estate of Helena Wangechi Njoroge (Deceased)* (2015) eKLR, the court referring to a Grant Ad litem held that:-

“It was limited to the purpose of filing suit to preserve the three assets of the estate. It is what is called a grant of letters of administration ad Litem. The suit envisaged to be filed on the strength of a grant ad litem is not a probate or succession case, or an interlocutory application within a probate or succession cause, but rather a civil suit. Indeed, one need not obtain a grant of any sort to enable him file a succession cause. A grant of representation



is only necessary where one intends to file a civil suit to protect or defend the estate against third parties.”

14. I have perused the record of the court and it is clear that the plaintiff has not annexed a copy of grant letters of administration. It therefore follows that she has no locus standi to bring the suit herein.
15. In the end, I find that the suit herein is incompetent and the same is struck out with costs to the defendant.
16. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 18<sup>TH</sup> DAY OF JULY, 2022.**

**L. NJUGUNA**

**JUDGE**

.....for the Plaintiff

.....for the Defendant

