



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Nyaribari v Mogaka; Onyango & another (Interested Parties) (Environment and Land Appeal E018 of 2022) [2023] KEELC 17422 (KLR) (18 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17422 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND APPEAL E018 OF 2022**

JM KAMAU, J

MAY 18, 2023

BETWEEN

LUCY MAKORI NYARIBARI APPELLANT

AND

NATHAN KEBAGENDI MOGAKA RESPONDENT

AND

LINET MORAA ONYANGO INTERESTED PARTY

COLLINS MONGARE NYARIBARI INTERESTED PARTY

(Being an Appeal from the order of the Learned Magistrate Hon. C.W. Waswa – SRM made and given on the 14th day of December 2022 in Nyamira CMC MISC. ELC)

RULING

The Application before court is dated 01/03/2023 which seeks the following Orders:-

1. That the instant application be certified urgent and be heard ex-parte in the first instance as service of the same be dispensed with.
2. That the Hon. Court be pleased to grant leave to enjoin Linet Moraa Onyango & Collins Mongare Nyaberi as Interested Parties for purposes of the instant Application.
3. That upon granting prayer two (2) above, the Hon. Court be pleased to order the remains of Jasper Nyakoe Nyaribari be removed from Nyamira County Hospital for burial.
4. That costs of the instant application be borne by the Appellant/Respondent.

The Interested Parties Linet Moraa Onyango & Collins Mongare Nyaribari



5. grounded their Application by first admitting that they were not parties in the suit appealed from i.e. Nyamira CMCC ELC NO. E043 of 2022 which subsisted in the lifetime of the deceased, Jasper Nyakoe Nyaribari but they now intend to be joined as Interested Parties on appeal. The deceased was their brother as well as the Respondent. He died on 17/11/2022 and his body still lies in the morgue. The said deceased person was a beneficiary of the suit land L.R. No. West Mugirango/bogichora/953.
6. The Respondent did not oppose the Application but the Appellant did by arguing that the Interested Parties did not participate in the lower court as they were not parties thereto and accordingly they have no *locus standi* to be parties in the current Appeal. They have not even sought to be parties in the lower court.
7. Both counsel were heard by way of making oral Submissions in open court which Submissions I have considered. I do observe that the suit in the lower court is still subsisting. Only an Order which is interlocutory in nature was made by the said court. The parties in the suit are the Appellant herein Lucy Makori Nyaribari as the Plaintiff while the Defendant Nathan Mogaka Kibagendi is the Respondent herein. The suit in the lower court was instituted by the said Lucy Makori Nyaribari on 24/11/2022 seeking an order restraining the Defendant from burying the body of Jasper Nyakoe Nyaribari on the parcel of land known as West Mugirango/bogichora/953. Lucy claims to be the lawful beneficiary of the Deceased's Estate together with her 5 sisters and she claims that she buried her later mother on the said suit land. She claims that the Defendant/Respondent herein filed a Succession Cause in Nyamira CMSC No. 45 of 2020 and got a Grant issued to him which was later confirmed and he became the owner of the entire Estate of the Appellant's mother, Keremensia Kemunto Nyaribari who passed on, on 21/03/2019. The Appellant filed objection to the Grant which matter is yet to be heard and finalized. In the meantime, the Respondent intends to bury the body of his late brother Jasper Nyakoe Nyaribari on the suit land.
8. On 01/12/2022 the Trial Learned Magistrate gave restraining orders and ordered that the matter be heard expeditiously. The following day the Defendant filed a Defence. He said that both of them are legal beneficiaries of the Estate of Keremensia Kemunto Nyaribari. He avers that the Deceased, Keremensia is also his mother. He avers that he intended to bury the late Jasper Nyakoe Nyaribari who is his brother as well on the portion the deceased used to occupy on the suit land. On 14/12/2022 a consent was recorded by the parties in the lower court to the effect that: -

"By consent the parties to be released from police custody as well as their relatives. The parties to call a surveyor to the ground to demarcate the land within 5 days and the sub division be done."
9. It is against this consent that the Appellant has moved this court and the Interested Parties, siblings of the Deceased and the parties herein have moved the court. The said Applicants watched the proceedings in the lower court from the time the suit was instituted on 24/11/2022 till the Ruling made on 14/12/2022 without making known to the trial court that they had an interest in the suit. They can therefore not be allowed to take part in an Appeal they had no part to play in which hitherto gave rise to the said Appeal. A party can only appeal against an Order/Decree that he was part of. He can also only be made to respond to an Appeal where an order was granted against him in the suit from which the appeal arises. But what happens if orders are made against him in the lower court? He should apply to set them aside or to have them quashed in a proper case. What appears to be happening here is that the 2 Applicants were expecting the case to take a certain direction but when this was not the case, they must have agreed with one of the parties to support the latter in this Appeal by way of becoming additional parties. This court cannot allow this to happen and the Application dated 01/03/2023 is accordingly disallowed with costs. This Appeal should be expedited and I further order



that the Appellant do file the Record of Appeal within the next 14 days and the matter be mentioned for directions within a further 7 days.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 18TH DAY OF MAY 2023.

MUGO KAMAU

JUDGE

In the Presence of:

Court Assistant: Sibota

Appellant: N/A

Respondent: N/A

Mr. Moracha for the intended interested parties

RULING - ELC APPEAL NO. E018 OF 2022 PAGE 2 | 2

