



**Kimotho & 2 others (Suing on behalf of the Estate of Margaret Njeri Kimotho) v
Waiganjo (Suing as a legal representative of Wachu Waiganjo) & 2 others (Environment
& Land Case 669 of 2017) [2023] KEELC 19276 (KLR) (25 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19276 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 669 OF 2017**

BM EBOSO, J

JULY 25, 2023

BETWEEN

IRENE GATHONI KIMOTHO 1ST PLAINTIFF

FLORENCE WANGARI NJERI 2ND PLAINTIFF

VERONICA NDUITA MUMBI 3RD PLAINTIFF

SUING ON BEHALF OF THE ESTATE OF MARGARET NJERI KIMOTHO

AND

**WILLIAM KIBERA WAIGANJO (SUING AS A LEGAL REPRESENTATIVE OF
WACHU WAIGANJO) 1ST DEFENDANT**

NYAKINYUA INVESTMENT LIMITED 2ND DEFENDANT

REGISTRAR OF LANDS RUIRU 3RD DEFENDANT

RULING

1. Through a notice of motion dated 30/6/2022, the plaintiffs seek an order compelling the defendants to produce the original titles relating to parcel number Ruiru/Ruiru East Block 2/2378 and Ruiru/Ruiru East Block 2/2379 for verification by the Government Printer. The said application is the subject of this ruling.
2. The application is premised on the grounds set out on the face of the notice of motion; in the supporting affidavit sworn by Irene Gathoni Kimotho on 30/6/2022; and in the supplementary affidavit sworn by the same deponent on 3/2/2023. The application was canvassed through written submissions dated 3/2/2023, filed by M/s Ombati Otieno Opondo & Awino Advocates.



3. The 1st defendant opposed the application through a replying affidavit sworn on 18/1/2023 and brief written submissions dated 17/2/2023, filed by Bwogo Manoti & Chepngeno Associates Advocates.
4. The case of the applicants is that the original titles bear the same serial number and that they have presented copies of the titles to the Government Printer. They add that the Government Printer has advised that the two titles should be presented for verification. They have, however, not exhibited any form of communication from the Government Printer.
5. The case of the 1st defendant is that, allowing the verification of his titles at this stage could potentially prejudice his case. He contends that all issues concerning the validity of the titles should be fully and fairly litigated during the hearing of the case.
6. I have considered the application, the response to the application, and the parties' rival submissions. Inspection of documentary evidence is a pre-trial proceeding that is conducted by the Deputy Registrar. There is no evidence that the applicant has called for the production of the original titles for inspection as part of pre-trial proceedings. Similarly, there is no evidence of compliance with the requirements of section 69 of the *Evidence Act* which relates to service of notice to produce.
7. In the circumstances, the notice of motion dated 30/6/2022 is pre-mature. The same is rejected on the ground that it is pre-mature. Let this matter be listed before the Deputy Registrar for parties to finalise pre-trial before the matter is listed for hearing before this court.
8. In the end, the notice of motion dated 30/6/2022 is struck out for having been brought prematurely. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 25TH DAY OF JULY 2023

B M EBOSO

JUDGE

In the presence of:-

Mr. Awino for the plaintiffs

Ms Mwangi for the 3rd defendant

Mr Cheruiyot for the 1st Respondent

