



**Muriu v Muriu & 3 others (Environment and Land Case  
36 of 2019) [2023] KEELC 18910 (KLR) (14 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 18910 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE 36 OF 2019**

**BM EBOSO, J**

**JULY 14, 2023**

**BETWEEN**

**JANE WAMBUI MURIU ..... PLAINTIFF**

**AND**

**JOSEPH WAIRIA MURIU ..... 1<sup>ST</sup> DEFENDANT**

**ESTATE OF SIMON BINDI MURIU ..... 2<sup>ND</sup> DEFENDANT**

**GEORGE KIMANI MURIU ..... 3<sup>RD</sup> DEFENDANT**

**FRANCIS GICHOHI MURIU ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**Background**

1. The plaintiff is a sister to: (i) Joseph Wairia Muriu [the 1st defendant]; (ii) the late Simon Bindi Muriu - whose estate is the 2nd defendant; (iii) George Kimani Muriu [the 3rd defendant]; and (iv) Francis Gichohi Muriu [the 4th defendant]. The five siblings are children of the late Isaac Muriu Wairia also known as Mureu Wairia [hereinafter referred to as “the deceased”]. It does emerge from the documents filed in this suit, including the two share certificates that are at the centre of this dispute, that the deceased and the parties to this suit interchangeably spelt their surname as “Muriu” or “Mureu”.
2. During his life time, the deceased owned one share comprised in Share Certificate Number 459 in Kiganjo Location Ranching Company Limited. The Share Certificate was issued to the deceased on 21/5/1984. By dint of owning the one share, the deceased was the beneficial owner of the following three parcels of land within subdivision schemes that were owned by Kiganjo Location Ranching Company Limited: (i) Land Parcel Number Juja/Juja East Block 1/239, measuring approximately 1.012 hectares; (ii) Thika Municipality Block 30/1396, measuring approximately 0.0924 hectares; and (iii) Thika Municipality Block 30/1818, measuring approximately 0.1300 hectares.



3. The deceased died on 9/7/1989. At the time of the deceased's demise, the land registers relating to the three parcels of land had not been opened. Further, the one share that the deceased held in Kiganjo Location Ranching Company was still held in his name.
4. On 9/2/2006, the four sons of the deceased caused the deceased's one share in Kiganjo Location Ranching Company Limited to be transferred into their joint names and procured a new share certificate in their joint names, dated 9/2/2006. On 25/5/2007, the quartet caused a land register relating to Juja/Juja East Block 1/239 to be opened. On the same day, they caused the land to be registered in their joint names as absolute proprietors. On the same day, 25/5/2007, they caused a land register relating to Thika Municipality Block 30/1818 to be opened. On the same day, they caused the said land to be registered in the joint names of Joseph Wairia Muriu and Simon Bindi Mureu as absolute proprietors. On 14/1/2009, they caused a land register relating to Thika Municipality Block 30/1396 to be opened. On the same day, they caused the land to be registered in the joint names of Francis Gichohi Muriu and George Kimani Mureu as absolute proprietors. Transfer of the one share and the above registrations were all procured after the death of the deceased and were done outside the framework in the *Law of Succession Act*.
5. Succession relating to the estate of the deceased was subsequently initiated in Nyeri High Court Succession Cause No 292 of 2010. On 7/9/2010, the High Court at Nyeri issued a Grant of Letters of Administration to Jane Wambui Muriu [the plaintiff] and Simon Bindi Muriu [whose estate is named as the 2nd defendant]. Simon Bindi Muriu died a few days prior to the actual date of signing and issuance of the Grant.

#### **Plaintiff's Case**

6. Against the above background, the plaintiff initiated this suit in her capacity as the only surviving administrator of the estate of the late Isaac Muriu Wairia and as a beneficiary of the deceased's estate. She sought the following verbatim reliefs against her four siblings:
  - a. A declaration that the transfer effected to transfer the property known as Juja/ Juja East Block 1/239 to Joseph Wairia Muriu, Simon Bindi Muriu (deceased), George Kimani Muriu and Francis Gichohi Muriu was fraudulent and illegal, and of no legal effect and that the same be canceled forthwith.
  - b. A declaration that the transfer effected to transfer the property known as Thika/ Municipality Block 30/1818 to Joseph Wairia Muriu and Simon Bindi Muriu was fraudulent and of no legal effect and that the same be cancelled forthwith.
  - c. A declaration that the transfer effected to transfer the property known as Thika/ Municipality Block 30/1396 to George Kimani Muriu was fraudulent and of no legal effect and that the same to be cancelled forthwith.
  - d. An order for restoration of the titles to the properties known as Juja/ Juja East Block 1/239, Thika Municipality Block 30/1818, and Thika/ Municipality Block/1396 to Isaac Muriu Wairia for distribution amongst the beneficiaries of his estate.
  - e. An order of permanent injunction restraining the defendants by themselves, personal representatives, agents, servants and or employees or otherwise howsoever from interfering with the properties known as Juja/ Juja East Block 1/239, Thika Municipality Block 30/1818 and Thika Municipality Block 30/1396 by transferring, sub-dividing or leasing.
  - f. Costs of the suit.



- g. Such other and/or further relief as this honourable court may deem fit to grant.
7. The case of the plaintiff was that the deceased's one share comprised in Share Certificate Number 459 together with the three corresponding parcels of land formed part of the estate of the deceased. She further contended that the transfer of the share and the registrations of the three parcels of land in the names of the four siblings were procured fraudulently, illegally and through dishonesty. It was her case that the registrations were procured in contravention of the provisions of the Law of Succession Act. She contended that the three parcels of land formed part of the estate of the deceased and ought to be distributed to the beneficiaries of the estate of the deceased in accordance with the Law of Succession Act.

### **Defendants' Case**

8. The defendants filed a joint statement of defence dated 29/5/2019. Accompanying the joint statement of defence was a written authority dated 29/5/2019, authorizing George Kimani Muriu to sign documents on behalf of the defendants. Their case was that the three parcels of land were gifted to the four sons by the deceased during his life time. They contended that they followed due process in acquiring the title deeds which they held. They added that the plaintiff had always been aware of the fact that their father gave the suit properties to the four sons while she was given an equal share of land elsewhere.

### **Plaintiff's Evidence**

9. The plaintiff testified as PW1 and closed her case. She adopted her written statement dated 16/10/2018. She produced a total of seven (7) exhibits. In summary, her evidence was that she was the administrator of the estate of the late Isaac Muriu Wairia who died on 9/7/1989. She is a daughter of Isaac Muriu Wairia. The 1st, the 3rd, and the 4th defendants, and the late Simon Bindi Muriu are/were her brothers. Their other siblings are Emily Njoki Mwangi and Agnes Wanjiku Muriu.
10. The plaintiff added that together with the late Simon Bindi Muriu, they were chosen to be the administrators of the estate of their late father. She stated that by the time the formal grant was signed, the late Simon Bindi Muriu had died, hence she was the only surviving administrator of the estate.
11. She further stated that it came to her knowledge that her four siblings had illegally caused the three parcels of land to be registered in their names without involving the other beneficiaries and without following the due process stipulated under the law, which required that succession be undertaken and all the beneficiaries be involved. She added that their late father died intestate. PW1 stated that she did not include the three parcels of land in the succession petition she initiated because she did not have the details and the relevant papers relating to them. She urged the court to grant the reliefs sought in the plaint.

### **Defendant's Evidence**

12. Joseph Wairia Muriu testified as DW1. He adopted his written statement dated 29/5/2019. His evidence was that, together with his late brother, Simon Bindi Muriu, they were "allocated" Thika Municipality Block 30/1818. He added that the four brothers were jointly "allocated" Juja/ Juja East Block 1/239. He further stated that the parcels of land were given to them by their late father during his lifetime and did not therefore form part of the estate of their late father. He added that the plaintiff was given land parcel number Gikondi/ Gikondi/366 in Nyeri "if she failed to get married and returned home". It was his evidence that this fact was known to the plaintiff and that is why she did not list the parcels of land as part of his late father's estate at the time of filing the succession cause.



13. DW1 testified that before their father died, he had indicated what each one of them would inherit, adding that this fact was known to the plaintiff because it was “declared during family gatherings held in the presence of the plaintiff”. Lastly, he stated that they followed due process in procuring transfer of the parcels of land into their names.
14. During cross-examination, DW1 confirmed that he processed titles to the suit properties after the death of their father. He further confirmed that succession relating to the estate of their late father was done through Nyeri High Court Succession Cause No. 292 of 2010. He stated that by the time the Succession Cause was initiated, they had already procured the titles in their names. He added that prior to registration of the parcels in their names, ownership documents were in the name of their late father. He confirmed that during succession, Gikondi/ Gikondi/366 was distributed to Jane Wambui Muriu, Francis Gichohi Muriu and the estate of the late Simon Bindi Muriu. Lastly, he stated that he did not have documentary evidence to prove that the suit properties were given to them by their late father during his lifetime.
15. Ann Wangui testified as DW2. Her evidence was that she was a daughter to the late Simon Bindi Muriu and one of the administrators of his estate. She added that prior to his death, the late Simon Bindi Muriu showed them where the suit properties were located.
16. George Kimani Muriu testified as DW3. He adopted his witness statement dated 29/5/20. His evidence was that, together with Francis Gichohi Muriu, they were “allocated” parcel number Thika Municipality Block 30/1396 while Juja/Juja East Block 1/239 was “allocated” to the four brothers. He added that he had lived on Thika Municipality Block 30/1396 since the year 2006. It was his evidence that the plaintiff had always been aware that he lived on the land as his, adding that the plaintiff supported him in constructing a family house on the land.
17. During cross-examination, he stated that the suit properties were given to the four sons by their late father through oral statements made severally. He was not able to remember the exact date when the oral statements were made. He added that the share certificate issued to them in February 2006 was issued on the basis of a chief’s letter. He also testified that ownership records at Kiganjo Location Ranching Company Limited were changed on the basis of the chief’s letter.
18. Francis Gichohi Muriu testified as DW4. He adopted his written statement dated 29/5/2019. His evidence-in-chief was that, together with George Kimani Muriu, they were “allocated” land parcel number Thika Municipality Block 30/1396, and that the four brothers were jointly “allocated” land parcel number Juja/ Juja East Block 1/239. He added that their late father had indicated that his sons were to inherit the plots in Thika and Juja and the plaintiff was to get land parcel number Gikondi/ Gikondi 366 in Nyeri in case she was not married. DW4 added that the deceased died before processing titles relating to the suit properties into his name. He stated that he funded the process of registering titles to the three parcels of land.
19. During cross examination, DW4 stated that although he funded the processing of the titles, he did not have the relevant receipts that were issued to him.
20. Emily Njoki Mwangi testified as DW5. She adopted her written statement dated 13/1/2020. Her evidence was that she was the first born in the family of the deceased. She added that the deceased bought shares at Kiganjo Ranching Company Limited which he gifted to her brothers as “he clearly stated that the plot will be constructed by his sons” (sic). She further stated that the deceased indicated that “the daughters” were to share “the land bought from Gachanja but the sons could also farm there if there was need” (sic). It was her written evidence that their father “gave the plot at Thika Municipality exclusively to the sons”. She added that their deceased father also stated that in case any



of the daughters was to “return home” or was not married, their share would be land parcel number Gikondi/ Gikondi/336 in Nyeri. Lastly, she stated that the plaintiff had never objected to the fact that “the plot at Thika was exclusively left to” their brothers.

21. During cross-examination, she stated that she attended the succession court at Nyeri and informed the succession court that she was not interested in her late father’s estate. She added that she was aware that the plaintiff wanted all the children of their deceased father to share his assets equally.

### **Plaintiff’s Submissions**

22. The plaintiff filed written submissions dated 22/3/2023 through M/s W.J Ithondeka & Co Advocates. Counsel for the plaintiff identified the following as the two issues that fell for determination in this suit: (i) Was the transfer of the suit properties in favour of the defendants fraudulent and illegal?; and (ii) Is an order for cancellation of the certificates of title and restoration of the suit properties to the estate of Isaac Muriu Wairia merited.
23. On whether the impugned transfers were done fraudulently and illegally, counsel submitted that there was evidence that the transfers were done on 25/5/2007 and 14/1/2009 respectively. Counsel contended that the transfers were done in contravention of the provision of Sections 55 and 82 of the Law of Succession Act. Counsel urged the court to find that the transfers were illegal and fraudulent on the above ground.
24. On whether the order of cancellation and restoration should be made, counsel cited Section 26 (1) of the Land Registration Act and submitted that the defendants having admitted that they acquired the suit properties contrary to the provisions of Section 55 of the Law of Succession Act, the titles were illegal and should be cancelled and the suit properties should be restored to the estate of the deceased for distribution in accordance with the law of succession.

### **Defendant’s Submissions**

25. Acting in person, the defendants filed written submissions dated 17/4/2023. They faulted the plaintiff for taking “seven years to file” the succession cause at Nyeri. They reiterated that the fact of their father’s declaration as to who should inherit which property was known to all the siblings because the declaration was made “during family gatherings held in the presence of the plaintiff”. They urged the court to dismiss the plaintiff’s suit.

### **Analysis and Determination**

26. I have considered the parties’ pleadings, evidence and submissions in this suit. I have also considered the relevant legal frameworks and jurisprudence on the key issues that fall for determination in the suit. The following are the three key issues that fall for determination in the suit; (i) Whether transfer of the share of the late Mureu Wairia also known as Isaac Muriu Wairia held in Kiganjo Location Ranching Company Limited, denoting the suit properties, to Joseph Wairia Muriu, George Kimani Muriu, Francis Gichohi Mureu and Simon Bindi Mureu (deceased) was done illegally and/or fraudulently; (ii) Whether the registrations of the suit properties in the names of the above four sons of the deceased were procured illegally and/or fraudulently; and (iii) Whether the plaintiff is entitled to the reliefs sought in this suit. I will dispose the three issues sequentially in the above order.
27. The first issue relates to the legality of the transfer of the deceased’s one share in Kiganjo Location Ranching Company Limited to his four sons. The plaintiff is a daughter of the deceased and a biological sister to the four brothers. She contends that her siblings illegally and fraudulently procured registration of their late father’s share into their names. The four siblings contend that they followed



due process. They add that the suit properties were gifted to them inter vivos during the lifetime of their deceased father. Was the transfer of the share illegal and fraudulent?

28. There is common ground that the deceased owned the one share in Kiganjo Location Ranching Company Limited. There is also common ground that the deceased died on 9/7/1989 and that at the time of his death, the share was still held in his name. The four sons contend that in the year 2001, they obtained a letter from their Area Location Chief and, using the chief's letter, they procured a transfer of the share into their names.
29. During trial, George Kimani Muriu who testified as DW3 produced five exhibits contained in a bundle dated 31/1/2020. Defence exhibit no 1 was a share certificate relating to the one share that hitherto belonged to the deceased. The share certificate was issued to the four brothers on 9/2/2006. DW3 also produced a letter dated 4/7/2018 from M/s Kiganjo Location Ranching Company Limited in which the Secretary of the Company stated as follows:

“Ref: High Court Succession Cause No 292 of 2010 Estate of the late Isaac Muriu Wairia.”

We are writing to confirm the following:-

That Isaac Muriu Wairia was a shareholder in our company vide share certificate No 459.

But the same was transferred to four sons vide chiefs letter as a confirmation.

Their names are as follows:

1. Joseph Wairia Mureu
2. Simon Bindi Muriu
3. George Kimani Muriu
4. Francis Gichohi Muriu

The following are the shamba and two plots:

1. Shamba (Juja/Juja East 1/239)
2. Plot (Thika Municipality Block 30/1396)
3. Plot (Thika Municipality Block 30/1818)

That is all we can confirm from our registers and records to date.”

30. It is clear from the above letter which the defendants produced and relied on that the deceased's share was transferred on the basis of a chief's letter. In their signed written submissions, the defendants argued that the chief's letter was obtained from the chief in the year 2001. This was more than ten years after the death of the deceased. The deceased died on 9/7/1989.
31. Section 77 of the repealed *Companies Act*, Cap 486, contained the following framework on transfer of shares held in a company:

“77. Notwithstanding anything in the articles of a company, it shall not be lawful for the company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer has been delivered to the company.

Provided that nothing in this section shall prejudice any power of the company to register as shareholder or debenture holder any person to whom the right to



any shares in or debentures of the company has been transmitted by operation of the law.”

32. Section 78 of the repealed *Companies Act* contained the following framework on how transfer of a share of a deceased shareholder was to be effected:

“78. A transfer of the share or other interest of a deceased member of a company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer.”

33. For companies that were limited by share but were not private companies, Regulation 29 of Table A of the First Schedule in the repealed Act contained the following regulatory framework on transfer of shares:

“In case of the death of a member of the survivor or survivors where the deceased was a joint holder, and the personal representatives of the deceased where he was a sole holder, shall be the only persons recognized by the company as having any title to his interest in the shares; but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.”

34. Besides the framework in the repealed *Companies Act*, Section 45 of the *Law of Succession Act* provided the following prohibitory framework on dealings relating to the property that was held in the name of a deceased person:

- (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
- (2) Any person who contravenes the provisions of this section shall-
  - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
  - (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

35. Section 79 of the *Law of Succession Act* contained the following framework in relation to the person in whom property of the deceased vested:

“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”

36. It is clear from the above legal frameworks that were in force between 4/7/1989 [the day the deceased died] and 9/2/2006 [the day the deceased’s four sons procured a transfer of the share relating to the suit properties] that transfer of the deceased’s share could only be effected by the duly appointed personal representative(s) of the deceased. It does therefore clearly emerge that the share transfer which the four brothers procured in 2006 was procured in contravention of the mandatory provisions of the now



repealed *Companies Act* and the *Law of Succession Act*. Consequently, it is my finding that the said share transfer was procured illegally.

37. The second issue is whether the registrations of the four brothers as proprietors of the suit properties were procured illegally and/or fraudulently. The three parcels of land accrued to the deceased by virtue of the one share that the deceased owned in Kiganjo Location Ranching Company Limited. The four sons of the deceased procured an illegal transfer of the share. Using the illegally procured share, they illegally procured registration of the three parcels of land into their names. They did this without following the procedure laid down in the *Law of Succession Act* and the now repealed *Companies Act*. It is also clear that they procured the titles in violation of the frameworks in Part VI and Part VII [Sections 108 to 127] of the repealed Registered Land Act which regulated execution of land disposal instruments.
38. The defendants contended that they had been gifted the suit properties during the lifetime of the deceased. There was, however, no evidence of any instrument gifting or vesting the suit properties in the names of the four brothers. Even if gifting had been established, under Section 82 (c) as read together with Section 79 of the *Law of Succession Act*, only the duly appointed personal representative(s) of the deceased could convey or vest the gifts into the names of the four brothers by executing the mandatory vesting instruments.
39. It is therefore clear from the law and from the evidence in this suit, that the titles which the four brothers are waving were procured in violation of the mandatory requirements of the repealed *Companies Act*; the mandatory provisions of the repealed *Registered Land Act*; and the mandatory provisions of the *Law of Succession Act*. Based on the evidence before me, I have no doubt that their registrations as proprietors of the three parcels of land were procured illegally and the titles procured pursuant to the said registrations were similarly obtained illegally. That is my finding on the second issue.
40. On the last issue, I have found that the transfer of the deceased's share and the impugned registrations and titles were all procured illegally. The result is that the registrations and the titles are to be nullified. Consequently, my finding on the third issue is that the plaintiff is entitled to the reliefs sought in the plaint except the plea for costs. Judgment will accordingly be entered for the plaintiff as prayed.
41. On costs, this dispute involves blood siblings. It is expected that they will sit down as a family and agree on how to cordially finalize the administration of the estate of their deceased father. An award of costs in the circumstances is not desirable.
42. In the end, this court makes the following disposal orders:
  - a. A declaration is hereby made to the effect that the transfer of land parcel number Juja/ Juja East Block 1/239 to Joseph Wairia Muriu, Simon Bindi Muriu (deceased), George Kimani Muriu and Francis Gichohi Muriu was fraudulent and illegal, and of no legal effect and that the same is hereby cancelled.
  - b. A declaration is hereby made to the effect that the transfer of land parcel number Thika/ Municipality Block 30/1818 to Joseph Wairia Muriu and Simon Bindi Mureu was fraudulent and of no legal effect and that the same is hereby cancelled.
  - c. A declaration is hereby made to the effect that the transfer of land parcel number Thika/ Municipality Block 30/1396 to Francis Gichohi Muriu and George Kimani Mureu was fraudulent and of no legal effect and that the same is hereby cancelled.



- d. An order is hereby made for restoration of the titles to the properties known as Juja/ Juja East Block 1/239, Thika Municipality Block 30/1818, and Thika/ Municipality Block/1396 to Isaac Muriu Wairia or to his personal representative for distribution amongst the beneficiaries of his estate in accordance with the Law of Succession.
- e. An order of permanent injunction is hereby made restraining the defendants by themselves, their personal representatives, agents, servants and or employees or otherwise, howsoever, from interfering with the properties known as Juja/ Juja East Block 1/239, Thika Municipality Block 30/1818 and Thika Municipality Block 30/1396 by transferring, sub-dividing or leasing them.
- f. Parties shall bear their respective costs of this suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 14TH DAY OF JULY 2023**

**B M EBOSO**

**JUDGE**

