



Githinji (Suing as the administrator of the Estate of Philisia Wambui w/o Gathungu - Deceased) v Githinji & 6 others (Land Case E099 of 2024) [2025] KEELC 3495 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3495 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E099 OF 2024**

**JG KEMEL, J
APRIL 30, 2025**

BETWEEN

MARY AGNES NJERI GITHINJI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF PHILISIA WAMBUI W/O GATHUNGU - DECEASED) .. PLAINTIFF

AND

**JANE WACHIRA GITHINJI 1ST DEFENDANT
CHRISTINE M WANJIRU MWANGI 2ND DEFENDANT
JOHN KURIA GATHUNGU 3RD DEFENDANT
PRISCILLA WAMBUI GATHUNGU 4TH DEFENDANT
SAMUEL GITHANGU KAMAU 5TH DEFENDANT
KEVIN JOE GATHUNGU KAMAU 6TH DEFENDANT
THE CHIEF LAND REGISTRAR 7TH DEFENDANT**

RULING

1. The Plaintiffs filed suit on 7/3/24 seeking orders inter alia that the subdivisions of parcel No Dagoreti / Waithaka/88 into Dagoreti/Waithaka 2174-2177 be declared illegal and void ab initio; a permanent injunction restraining the defendants from interfering with the suit lands and the cancellation of the subdivisions reverting the land to its original form.
2. Simultaneously the Plaintiffs filed a notice of motion dated the 6/3/2024 seeking the following orders;
 - a. That this matter be certified urgent and service of the same in the first instance be dispensed with.



- b. That the Defendants/Respondents whether by themselves, their servants and or agents be and are hereby restrained from selling or otherwise disposing the subject property comprised in Title Numbers Dagoretti/ Waithaka/ 2174, 2175, 2176 and 2177 (being sub-divisions of Title Number Dagoretti/ Waithaka /88) pending the hearing and determination of this suit.
 - c. That the Defendants/Respondents whether by themselves, their servants and or agents be and are hereby restrained from selling or otherwise disposing the Plaintiff's property comprised in Title Numbers Dagoretti/ Waithaka/ 2174, 2175, 2176 and 2177 (being sub-divisions of Title Number Dagoretti/ Waithaka /88) pending the hearing and determination of this suit.
 - d. That costs of the Application be provided for.
3. The application is premised on the grounds annexed thereto and the supporting affidavit of MaryAgnes Njeri Githinji sworn on even date. She deposed that original suit property was owned by their mother Philisia Wambui W/O Gathungu who unfortunately was diagnosed with dementia sometime in 2018 at the age of 97 years. That while she was alive the deponent had been appointed a guardian ad litem and manager of her estate arising from her condition of being compos mentis. She finally passed away on 17/11/23.
 4. That despite her medical condition, the defendants proceeded to subdivide the suit land and registered in their favour despite the caution/caveat lodged on the title on 2/3/2020 and to the exclusion of the other siblings and beneficiaries of the estate held in trust for the family of Philisia. The Plaintiff is apprehensive that the defendants may dispose the properties and entreated the court to allow the applicant to preserve the subject matter of the suit.
 5. On the 15/1/25 the Plaintiff filed an amended plaint where she described herself as the administrator of the estate of the late Philisia Wambui W/O Gathungu. In the said amended plaint the names of the 2nd and 3rd Defendants were removed from the suit. It is note while that the same having been filed after the close of pleadings was filed without the leave of the court having been sought and obtained.
 6. The application is opposed by the Defendants vide the Replying affidavit sworn by John Kuria Gathungu of even date where he termed the application frivolous, unmerited and contains concealment of material facts aimed at misleading the court to make adverse orders against the Defendants. That the defendants are the registered owners the suit properties being Dagoreti/ Waithaka /2174-2177, subdivisions yielded from the mother title – Dagoreti/Waithaka/88. That the subdivisions and transfer of the parcels were willingly carried out by the deceased during her lifetime. That Land control board consent was obtained and the all the processes were done above board.
 7. He added that the Plaintiff too was allocated land but has elected to conceal the material facts from the court but instead has filed suit to frustrate their enjoyment of the properties. He conceded that Philisia was adjudged cosmos mentis in 2021. That they hold valid titles. That there are cautions subsisting on the sub titles and not the mother title which means they were lodged after the process of subdivision and transfer was complete. Lastly that granting the orders as sought will hinder their enjoyment of their right to property and urged the court to dismiss the application with costs.

The Motion dated the 27/2/25

8. On the 27/2/25 the Defendants moved the court vide their motion of even date seeking in the main the striking out of the main suit on grounds that the Plaintiff filed the suit without first obtaining letters of grant of administration in the estate of the deceased hence lacked locus standi. That failure to obtain the necessary letters of grant of administration prior to filing the suit rendered the entire suit fatally



defective as it was instituted without proper legal standing. That the subsequent acquisition of grant does not cure the fundamental defect that existed at the inception of the suit.

9. In his supporting affidavit filed on even date, John Kuria Gathungu reiterated the averments above and urged the court to allow the application.

10. The Plaintiff did not oppose the application.

Directions

11. On 4/3/25 the court directed that both applications be heard together with the liberty to the parties to file and exchange written submissions. Save for the Defendants, it is noted that in both applications the Plaintiff failed to comply.

Analysis and determination

12. In determining the application, I will commence with the Defendants application dated the 27/2/25 and if it fails then I will embark on the Plaintiffs application of 15/1/25.

13. The issue for determination is whether at the time the Plaintiff filed suit on 6/3/24 she had the locus to do so. If that be in the positive what orders should the court issue.

14. It is not in dispute that the parties herein are all siblings and children and grandchildren of the late Philisia Wambui Gathungu.

15. It is also not in dispute that Philisia was the registered owner of the suit land namely Dagoreti/Waithaka/88.

16. Courts in this country have held that ascertainment of locus is very vital before filing a suit. Locus gives a party legal standing. A party without locus has been equated to a court without jurisdiction. In other words, locus goes to the root of the suit.

17. In this case the Plaintiff filed suit on 6/3/24 in her individual capacity adverting the property of a deceased person.

18. Section 82 of *Law of Succession Act* (LOSA) provides that;

“ 82. Personal representatives shall subject only to any limitation imposed by their grant, have the following powers:- (a) to enforce, by suit or otherwise, all causes of action which by virtue of any law, survive the deceased or arising out of his death for his personal representative; (b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them as they think best: (i) Any purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and (ii) No immovable property shall be sold before confirmation of the grant; (c) To assent, at any time after confirmation of the grant to the vesting of a specific legacy in the legatee thereof; (d)"

19. There is general consensus that the law protects property or assets belonging to a deceased person against intermeddling and requires that one has to obtain permission from the court to deal with it. It matters not if the person seeking to file suit is a child and spouse of the deceased. Legal standing is granted by the court and not assumed by virtue of familial or spousal relations.



20. On realizing the anomaly, the Plaintiff moved to court and obtained letters of grant of administration on the 24/6/24, three months later. The court is being called upon to determine whether the letters of administration obtained post filing the suit will cure the legal defect in this suit.

21. I am guided by the decision of the court in Julian Adoyo Ongunga V Francis Kiberenge Abano Migori Civil Appeal No.119 of 2015, where the court had this to say on the issue of a party filing a suit without having obtained a limited grant.

“Further, the issue of locus standi is so cardinal in a civil matter since it runs through to the heart of the case. Simply put, 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.”

22. I agree with the decision of the court in Isaya Masira Momanyi v Daniel Omwoyo & another [2017] KEHC 2083 (KLR) where the court stated as ;

The granted letters of administration takes effect from the date when it is issued as provided under Section 80 (2) of the Law of Succession Act which provides as follows: - 80(2) A grant of letters of administration, with or without the will annexed shall take effect only as from the date of such grant. A party can thereof not commence a suit on behalf of the estate of a deceased person without letters of administration and thereafter obtain the letters of administration subsequently. Where a suit is commenced without letters of administration in respect of a deceased estate such a suit is null and void ab initio and cannot be cured by a party subsequently obtaining the letters of administration

23. In the end I find that the Plaintiff was devoid of legal standing at the time she filed this suit. Consequently, this suit be and is hereby struck out.

24. Having allowed the application striking out the suit, I see no necessity of determining the application for temporary injunction as the same is now spent.

25. Final Orders for Disposal

- a. The Defendant’s application dated 27/2/25 be and is hereby allowed.
- b. Consequently, the suit herein be and is hereby struck out.
- c. The plaintiff’s application dated 15/1/2025 is dismissed.
- d. I make no orders as to costs.

26. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF APRIL,
2025 VIA MICROSOFT TEAMS.**

J.G. KEMEI

JUDGE

Delivered Online in the presence of:



Mr. Kamau for the Plaintiffs

Mr. Lubeto for the Defendants

CA – Ms. Yvette

