



Nyambati (Suing as the legal representative of the Estate of Samson Nyambati Nyamweya) v Ocharo & 7 others (Environment & Land Case 10 of 2021) [2023] KEELC 22250 (KLR) (7 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22250 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 10 OF 2021**

**M SILA, J
DECEMBER 7, 2023**

BETWEEN

CHARLES RATEMO NYAMBATI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF SAMSON NYAMBATI NYAMWEYA) PLAINTIFF

AND

**JACKTON OCHARO 1ST DEFENDANT
CHARLES RATEMO NYAMWEYA 2ND DEFENDANT
ALICE KERUBO NYAMBATI 3RD DEFENDANT
KEFA NAMI NYANGITO 4TH DEFENDANT
LAND REGISTRAR, KISII COUNTY 5TH DEFENDANT
ATTORNEY GENERAL 6TH DEFENDANT
ALICE KWAMBOKA NAMI 7TH DEFENDANT
VINCENT OGEMBO NAMI 8TH DEFENDANT**

RULING

(On whether the suit survives the order of abatement in respect of the 1st defendant)

1. This suit was commenced vide a plaint filed on 14 April 2016, and amended on 5 June 2018. The plaintiff sues as the administrator of the estate of Samson Nyambati Nyamweya (the deceased). In the suit, the plaintiff sued 8 defendants over the land parcel Kisii Town/Block III/139. The case of the plaintiff is that the late Samson Nyambati together with the 1st defendant Jackton Ocharo, and the 2nd defendant, Charles Ratemo Nyamweya, co-owned, as tenants in common, equal shares in the land parcel Kisii Town/Block III/139, which property is developed with a commercial building. It is averred



that through a sale agreement entered into on 12 August 2013, the suit property was irregularly sold to the 4th defendant, Kefa Nami Nyangito. The plaintiff contends that Samson Nyambati lacked capacity to contract owing to his mental status, and that the 3rd defendant (Alice Kerubo Nyambati, his second wife) took advantage of this position to unlawfully sell the property on behalf of the deceased. The plaintiff thus contends that the transfer of the land to the 4th defendant was fraudulent. On 11 October 2016, the suit property was transferred to Alice Kwamboka Nami and Vincent Ogembo Nami, the 7th and 8th defendants. They remain registered as proprietors to date. The 5th and 6th defendants are the Land Registrar, Kisii, and the Attorney General respectively. In a nutshell, the plaintiff wishes to nullify the sale to the 4th defendant and to have a declaration that a one-third share of the property belongs to him.

2. The case is yet to be concluded.
3. On 22 July 2019, the 2nd defendant died, and I have seen that on 30 November 2021, the court (Onyango J) made the order that he be substituted with his widow, one Dorcas Nyabera Nyamweya, though I must say that I have not seen any proof that she is a legal representative of his estate. The 1st defendant died on 4 January 2022 but no substitution was made within time and I marked the suit against the 1st defendant as abated. I directed counsel to address me as to whether the suit survives his death, and I have taken note of the submissions on record.
4. My view is that the cause of action survives the death of the 1st defendant. The suit property is currently registered in the names of the 7th and 8th defendants who are alive. What the plaintiff wants is a one-third share which he claims to be held in trust on behalf of the estate of his late father. Given that the 7th and 8th defendants are alive, it is my considered opinion that the suit can be continued despite the death of the 1st defendant. Of course, no orders can be obtained against the 1st defendant, but the question whether the one-third share of the late Samson Nyambati is still held in the property remains alive since the current proprietors are alive.
5. My holding therefore is that the suit survives the death of the 1st defendant and can proceed for hearing.
6. Orders accordingly.

DATED AND DELIVERED AT KISII THIS 7 DAY OF DECEMBER 2023

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

