



**Wambugu & 2 others v Karimi (Environment & Land Case  
14 of 2015) [2022] KEELC 2398 (KLR) (26 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 2398 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 14 OF 2015**

**JO OLOLA, J**

**MAY 26, 2022**

**BETWEEN**

**LYDIA WARUKIRA WAMBUGU ..... 1<sup>ST</sup> APPLICANT**

**STEPHEN KARIMI WAMBUGU ..... 2<sup>ND</sup> APPLICANT**

**MONICAH WANGECHI WAMBUGU ..... 3<sup>RD</sup> APPLICANT**

**AND**

**JOSEPH MWATHA KARIMI ..... RESPONDENT**

**JUDGMENT**

1. By the Originating Summons dated and filed herein on January 22, 2015, Lydia Warukira Wambugu, Stephen Karimi Wambugu and Monicah Wangechi Wambugu (hereinafter “the applicants”) pray for:
  - (1) A declaration that a grant of administration was issued to Joseph Mwatha Karimi only as the administrator of the estate of John Wambugu Karimi (Deceased) and in trust for the Applicants for land parcel:-
    - (i) Nyandarua/Kiriita/Mairo Inya Block 2 (Ndemia Ngai Ndeithia (459);
    - (ii) Mahiga/Munyange/363;
    - (iii) Land Plot No. 2270 OlJoro-Orok.
  - (2) A declaration that Joseph Mwatha Karimi therefore holds the above properties subject to trust in favour of the applicants and that the said trust be determined;
  - (3) A declaration that the applicants are the only dependents to the deceased hence the sole beneficiaries of his estate;



- (4) An order that the respondent do transfer land parcels number Nyandarua/Kiriita/Mairo Inya Block 2 (Ndemia Ngai Ndeithia (459), Mahiga Munyange/363, Land Plot No. 2270 01 Joro-Orok into the names of the Applicants;
  - (5) That the costs of this application be provided for.
2. The respondent – Joseph Mwatha Karimi neither entered appearance nor filed any response to the claim. The matter accordingly proceeded by way of formal proof wherein the applicants called five (5) witnesses in support of their case.
  3. PW1 – Stephen Karimi Wambugu is the 2<sup>nd</sup> applicant and a resident of Othaya. Relying on his supporting affidavit to the originating Summons as well as his written statement filed in court on January 22, 2015, PW1 testified that his father John Wambugu Karimi passed away on August 26, 1996. Prior to his death, PW1’s father owned the three parcels of land listed in the Originating Summons.
  4. PW1 testified that shortly after the death of his father, the respondent who is a younger brother to his father chased them away from the home in Nyandarua. PW1 was then 12 years old. When PW1 became an adult, they went to the Area Chief Mahiga Location to try and solve the matter. PW1 told the court that the respondent told the Area Chief that his brother did not leave any family behind. The Chief however gave PW1 a letter dated August 26, 1997 indicating that the Applicants were the family members of the deceased.
  5. PW1 further told the Court that they were able to obtain a copy of the Grant of Letters of Administration through which the Respondents claimed his father’s properties the same having been issued in Nyahururu PMCC Succession Cause No. 194 of 1996. PW1 told the Court that the family obtained a letter from the Director, Settlement Fund Trustees (SFT) confirming the land to have been owned by his father.
  6. PW1 testified that save for the parcel of land that was under the S.F.T all the other properties belonging to his father were now registered in the respondent’s name. He urged the Court to cancel the titles and have them revert to the names of the applicants.
  7. PW2 – Lydia Warukira Wambugu is the 1<sup>st</sup> applicant and the mother to the 2<sup>nd</sup> and 3<sup>rd</sup> applicants. She told the court she was the wife of the late John Wambugu Karimi.
  8. Supporting PW1’s testimony, PW2 told the court the respondent who was the only brother to her husband chased her away from the land they had stayed in one month after her husband was buried. The respondent then proceeded to file a Succession Cause in Nyahururu without PW2’s knowledge and proceeded to inherit all the property after claiming the brother had no family.
  9. PW3 – Isaac Kihara is a brother-in-law of the respondent having married his sister Margaret Wairimu. He told the Court that John Wambugu Karimi was a brother to the Respondent and that before his death in 1996, he was living in Mairo Inya with his family and his grandmother. PW3 told the court the parcels of land in contention belonged to the late John Wambugu Karimi.
  10. PW4 – Priscillah Nyambura Nderitu is a cousin of the respondent as her mother is a sister to the Respondent’s father. PW4 told the court she knew the family well and that his deceased cousin John Wambugu Karimi was the proprietor of the parcels of land in contention. PW4 told the court the Respondent chased his brother’s family after the brother died and took over his deceased brother’s properties.



11. PW5 – Monica Wangechi Wambugu is the 3<sup>rd</sup> applicant. She told the Court she is the daughter of PW2 together with the late John Wambugu Karimi. Her father passed away in 1996 when she was only 10 years old. PW5 reiterated the statements made by her brother (PW1) and her mother (PW2).

### **Analysis and Determination**

12. I have carefully perused and considered the applicants' pleadings, the testimonies of the five (5) witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions placed before me by the Learned Advocates for the applicants. The respondent did not take part in the matter which proceeded by way of formal proof.
13. The 1<sup>st</sup> applicant herein is the wife to the late John Wambugu Karimi who passed away on August 26, 1996. The 2<sup>nd</sup> and 3<sup>rd</sup> applicants are their son and daughter who as at the time of their father's death were aged 12 and 10 years respectively. The applicants told the court that prior to his death, the late John Wambugu Karimi was the sole proprietor of the parcels of land known as Nyandarua/Kiriita/Mairo Inya Block 2 (Ndemia Ngai Ndeithia (459), Mahiga Munyange/1363 and Plot No. 2270 Ol Joro-Orok.
14. It is the applicants case that about one month after Wambugu's death, his younger brother Joseph Mwatha Karimi (the respondent) chased away his young family from the land they occupied and the family was compelled to move away and stay in Othaya. They told the court that after chasing them away the Respondent took over his brother's properties and caused them to be registered in his name.
15. In support of their case, the applicants produced a copy of the Certificate of Death indicating the late Wambugu passed away at the age of 41 years. More significantly, the applicants produced a copy of a Grant of Letters of Administration intestate issued to the respondent on February 25, 1997 and a Certificate of Confirmation of the Grant issued on September 24, 1997 in Nyahururu Principal Magistrates' Court Succession Cause No. 194 of 1996.
16. A perusal of the schedule of the confirmed Grant reveals that the late Wambugu owned Plot No. 2270 Ol Joro-Orok, Plot No. 459 Ngai – Ndeithia and Plot No. 363 Othaya Mahiga. All those properties were by the said Grant issued to Joseph Mwatha Karimi (the respondent) as the sole heir.
17. From the letter dated August 26, 1997 from the Mahiga Location Chief (Pexh. 5) it was clear that other than Wambugu's brother, he was survived by his wife and two children who are the Applicants herein. The applicants have told the court they were unaware of the said Succession Cause and it was clear to me that the only way the respondent came to be the sole heir of the properties was through concealment of the fact that the deceased had left behind a family.
18. Arising from the foregoing, I was persuaded that the applicants had proved their case on a balance of probabilities more so in the absence of any evidence on the contrary.
19. Accordingly, I hereby enter Judgment for the applicants and issue the declarations and orders sought in their Originating Summons dated and filed herein on January 22, 2015.
20. I make no order as to costs.

**JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 26<sup>TH</sup> DAY OF MAY, 2022.**

In the presence of:

No appearance for the Plaintiffs



No appearance for the Defendant

Court assistant - Kendi

**J. O. Olola**

**JUDGE**

