



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
ELC. CASE NO. 452 OF 2011

**MONICAH WAIRIMU MBARI.....1<sup>ST</sup> PLAINTIFF**  
**SERAH MUTHONI MBARI.....2<sup>ND</sup> PLAINTIFF**  
**NAOMI WAITHIRA MBARI.....3<sup>RD</sup> PLAINTIFF**  
**JOSEPHINE WAMBUI WAINAINA.....4<sup>TH</sup> PLAINTIFF**  
**JAMES KAMAU HARRISON.....5<sup>TH</sup> PLAINTIFF**  
**JOHN NGUKU MUNGAI.....6<sup>TH</sup> PLAINTIFF**  
**GRACE NJERI HARRISSON.....7<sup>TH</sup> PLAINTIFF**

**VERSUS**

**MONICAH MUNTHONI KIMANI .....1<sup>ST</sup> DEFENDANT**  
**JOHN NJIRU NJUE.....2<sup>ND</sup> DEFENDANT**  
**ANTHONY KIMANI MUMBI.....3<sup>RD</sup> DEFENDANT**  
**MARY WANGUI MAINA.....4<sup>TH</sup> DEFENDANT**

**RULING**

Coming up before me for determination is the Notice of Motion dated 16/8/12 filed by the 2<sup>nd</sup> Defendant seeking for orders that the whole suit be struck out and/or be dismissed and for costs of the Suit.

The application is based upon the grounds appearing on the face of it together with the 2<sup>nd</sup> Defendant's Supporting Affidavit sworn on 16/8/13 in which he stated that the seven Plaintiffs claim to be the children of one Harrison Mbari Waithaka who died on the 7<sup>th</sup> September 1995 who was the registered owner of Land Parcel Thika Municipality Block 19/836 and also co-owner together with one Samuel Mungai Mbugua (deceased) of Thika Municipality Block 18/449 and 1224. He stated further that the Plaintiff/Respondents had not applied or been granted letters of administration in respect of the estates

of both the said Harrison Mbari Waithaka and Samuel Mungai Mbugua. He then stated that the Plaintiffs lack legal standing and capacity to file this suit in respect of the said properties as they have not been appointed as legal representatives of the said estates.

Despite having been duly served with this application and being afforded several chances to file their responses and written submissions, none of the Plaintiffs filed any response to this application.

The 1<sup>st</sup> Defendant filed her Replying Affidavit dated 8/7/13 in which she supported the application by the 2<sup>nd</sup> Defendant.

The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants all filed their written submissions all of which were in support of this application.

The issue for determination herein is whether the Plaintiffs are duly authorized to file this suit claiming ownership over the cited properties which form part of the estate of their late father and of Samuel Mungai Mbugua both of whom are deceased.

The law is very clear on this point. Section 82(a) of the Law of Succession Act provides as follows:

***“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 arise out of his death for his estate.”***

Section 79 of the same statute provides as follows:

***“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”.***

In respect of the estate of the late Harrison Mbari Waithaka, grant of letters of administration was granted to his wife, Esther Wambui Mbari, jointly with her son James Kamau Waithaka. However, the said Esther Wambui Mbari died in 2009 followed by her son James Kamau Waithaka who also died. Since that time to date, none of the Plaintiffs herein have taken the all important step of seeking to be appointed as administrators over the estate of their late father. This effectually makes it impossible for them to enforce any rights emanating from the estate of their late father which they are seeking to do in this particular suit.

As such, I do agree with the 2<sup>nd</sup> Defendant and the other Defendants who support this motion to have this suit dismissed on that ground with costs. Accordingly, I hereby dismiss this suit with costs to the Defendants.

SIGNED AND DELIVERED AT NAIROBI THIS 2<sup>ND</sup> DAY OF AUGUST 2013.

MARY M. GITUMBI

JUDGE