



**Dorcas Aleyo Enane (suing as the Legal Administrator of the estate of the late
Elijah A. Enane) & 2 others v Land Registrar, Kakamega (Environment &
Land Case E2 of 2020) [2022] KEELC 3642 (KLR) (14 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 3642 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE E2 OF 2020**

DO OHUNGO, J

JUNE 14, 2022

BETWEEN

**DORCAS ALEYO ENANE (SUING AS THE LEGAL ADMINISTRATOR OF THE
ESTATE OF THE LATE ELIJAH A. ENANE) 1ST PLAINTIFF**

ESTHER OMOCHE ABUKEYA 2ND PLAINTIFF

GERALD KISSINGER ENANE 3RD PLAINTIFF

AND

LAND REGISTRAR, KAKAMEGA DEFENDANT

JUDGMENT

1. By plaint dated July 8, 2020, the plaintiffs averred that they were the administrators of the estate of Elijah A Enane (deceased) who was the registered proprietor of the parcel of land known as Kakamega/ Municipality Block 1/61, the suit property. That prior to his demise, the deceased successfully processed documentation for extension of his lease but did not collect his title deed. That despite follow up for two years, no title was issued to them. They therefore prayed for judgment against the defendant for:
 1. A declaration that the said plot Kakamega/Municipality Block 1/61 ought to be transferred to the plaintiff and beneficiaries and consequently an Order be issued directing the defendant to transfer the said plot to the plaintiff as the administrator to hold in trust for the beneficiaries herein and title deed be issued accordingly.
 2. Costs of this suit with interest.
2. The defendant filed a defence in which he generally denied the plaintiffs' averments and urged the court to dismiss the suit with costs.



3. At the hearing, the third plaintiff, Gerald Kissinger Enane, testified as the sole witness in respect of the plaintiffs' case. He stated that the first plaintiff is his mother while the second plaintiff is his sister. That the deceased Elijah A Enane who was his father passed away on March 24, 2005 and that he and his mother instituted succession proceedings in respect of his estate wherein they became the administrators of the said estate. That prior to his death, the deceased was the registered proprietor of the suit property located within Kakamega town. That the deceased had been allotted the suit property on October 19, 2001 and that the lease extended on February 24, 2003. That despite Gazette Notice Volume no 11231 being issued on November 22, 2018, no title deed was issued to them two years down the line and no sufficient explanation was given by the defendant to justify the delay and refusal to issue the title deed. He produced as exhibits, copies of letter from Ministry of Lands and settlement dated February 24, 2003, letter from municipal council of Kakamega dated October 19, 2001, a letter of allotment, cheque for kshs 12,952 in favour of the Commissioner of Lands, Gazette Notice dated November 2, 2018 and Gazette Notice dated May 27, 2016. Although they had included in their list of documents a certificate of confirmation of grant, no copy of it was included in the bundle and he did not produce it, explaining that it was retained by the land registry when they sought re-issuance of title. The plaintiffs' case was closed at that point.
4. Since there was no attendance by the defendant despite evidence of service being availed, the defence case was closed upon application by counsel for the plaintiffs. Parties were then ordered to file and exchange submissions. Only the plaintiffs filed submissions.
5. The plaintiffs submitted that the deceased was allocated the suit property and his lease extended after he paid the requisite statutory fees. That as the administrators of the deceased's estate, they have the locus standi to seek redress. That under sections 9 and 33 of the [Land Registration Act](#), the defendant has a duty to maintain documents and to reconstruct any lost title. Terming the defence on record merely academic, they urged the court to grant them judgment.
6. I have considered the pleadings, the evidence and submissions in this matter. The issues that arise for determination are whether the plaintiffs have locus to bring this suit and whether the reliefs sought should issue.
7. The plaintiffs described themselves both in the plaint and in their evidence as the administrators of the estate of Elijah A Enane (deceased) who they maintain was the registered proprietor of the suit property. The plaintiffs basically seek to agitate a cause of action vested in the deceased. They can only do so if they are personal representatives of the deceased. The Court of Appeal made that clear in the case of *Troustik Union International & another v Jane Mbeu & another* [1993] eKLR where it stated:

... The common law is that "*action personalis moritur cum persona*", that is, a personal action dies with the person. ... To determine who may agitate by suit any cause of action vested in [a deceased person] at the time of his death, one must turn to section 82(a) of the [Law of Succession Act](#), which confers that power on personal representatives and on them alone. As to who are the personal representatives within the contemplation of the Act, section 3, the interpretative section provides an all inclusive answer. It says "personal representative means executor or administrator of a deceased person".
8. Beyond their claim of being the administrators of the deceased's estate, the plaintiffs have not produced either the original or a copy of any letters of administration in respect of the estate. They have attempted to explain the failure by claiming that their certificate of confirmation of grant was retained by the land registry when they sought re-issuance of title. If that be true, why did they not produce a copy of it or the unconfirmed grant? The bottom-line is that the plaintiffs have failed to establish *locus standi* to



bring this suit on behalf of the estate of Elijah A Enane (deceased). That alone is sufficient to bring these proceedings to a sudden and conclusive end.

9. The plaintiffs claim that the deceased was the registered proprietor of the suit property. They have neither produced a certificate of search nor a copy of a title document to support that contention. The deceased would only be entitled to pursue an extension of a lease if he was the registered proprietor of the lease in the first place. The correspondence and letter of allotment sought to be relied on are not evidence of title. As matters stand, we cannot tell if a lease existed and if so, whether it was actually due for renewal.
10. In view of the foregoing discourse, the plaintiffs have failed to establish their case. That being so, the reliefs sought cannot issue. I dismiss the plaintiffs' case with no order as to costs.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 14TH DAY OF JUNE 2022.

D O OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Okali holding brief for Ms Mukhwana for the plaintiffs

No appearance for the defendant

Court Assistant: E. Juma

