



REPUBLIC OF KENYA



**Kangethe & another v Ngige & 15 others (Environment & Land Case  
E009 of 2020) [2022] KEELC 3412 (KLR) (8 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3412 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E009 OF 2020**

**BM EBOSO, J**

**JUNE 8, 2022**

**BETWEEN**

**BONIFACE MUCHARA KANGETHE ..... 1<sup>ST</sup> PLAINTIFF**

**PETER KIHUGU KANGETHE ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**FRANCIS WAINAINA NGIGE ..... 1<sup>ST</sup> DEFENDANT**

**LEAH WANGUI NDEGWA ..... 2<sup>ND</sup> DEFENDANT**

**ROSEMARY GATHONI MWANGI ..... 3<sup>RD</sup> DEFENDANT**

**ELIZABETH WANJIKU HINGA ..... 4<sup>TH</sup> DEFENDANT**

**MOSES IRERI MURITHI ..... 5<sup>TH</sup> DEFENDANT**

**SAMUEL KATHURI NJUKI ..... 6<sup>TH</sup> DEFENDANT**

**JACKLINE MUKAMI KATHURI ..... 7<sup>TH</sup> DEFENDANT**

**CAROLINE WAMBUI NYAMU ..... 8<sup>TH</sup> DEFENDANT**

**JULIANA WANGUI KINYUA ..... 9<sup>TH</sup> DEFENDANT**

**ANTHONY MUCHIRI GITIRA ..... 10<sup>TH</sup> DEFENDANT**

**BONIFACE EPANTUS MBOGO ..... 11<sup>TH</sup> DEFENDANT**

**PURITY KATHAMBI GITUMA ..... 12<sup>TH</sup> DEFENDANT**

**DANIEL NJORA NGURURU ..... 13<sup>TH</sup> DEFENDANT**

**PETER CHEGE MBURU ..... 14<sup>TH</sup> DEFENDANT**

**LAND REGISTRAR RUIRU ..... 15<sup>TH</sup> DEFENDANT**

**HON ATTORNEY GENERAL ..... 16<sup>TH</sup> DEFENDANT**



## RULING

1. Boniface Muchara Kangethe and Peter Kihugu Kangethe initiated this suit through a plaint dated 25/1/2021. Their case was that the defendants had illegally and fraudulently acquired land parcel number Ruiru Kiu Block 2 (Githunguri) 3868 which belonged to their late father, David Kabiru Macharia alias Kangethe Muchara [the deceased]. They contended that the deceased owned the land through Share Certificate Number 2199 dated 5/9/1989 and Ballot Card Number 1222 issued to him by Githunguri Constituency Ranching Company Limited [the company]. They further contended that following the demise of their late father, the company transferred their late father's shares to them and issued to them Share Certificate Number B 3677 dated 29/10/2019. While processing registration of the land into their names, they were informed that the land had been registered in the name of the 1st defendant and the 1st defendant had caused the land to be subdivided into nine (9) parcels and had disposed the nine parcels to the 2nd to 14th defendants.
2. Consequently, they brought this suit, seeking, among other reliefs, a declaration that they were the bonafide owners of the suit land; an order for cancellation of the registrations and titles of the 1st to 14th defendants; an order for demolition of the defendants' houses and structures on the suit land; and an order restraining the defendants against interfering with their possession of the subdivisions parceled out of the suit land.
3. Together with the plaint, they filed a notice of motion dated 25/1/2021, in which they sought an interlocutory injunctive order restraining the defendants against subdividing, constructing on, adversely dealing with, trespassing on, or in any other manner dealing with the subdivisions parceled out of the suit land, pending the hearing and determination of this suit. They also sought an order of inhibition prohibiting all dealings in the subdivisions parceled out of the suit land. The said application is one of the two items that fall for determination in this ruling.
4. The second item falling for determination in this ruling is the 1st to 14th defendants' notice of preliminary objection dated 22/3/2021, through which the 1st to 14th defendants invited this court to strike out the plaintiff's suit in limine on the ground that, without a grant of letters of administration or probate, the plaintiffs lacked the locus standi to initiate or prosecute this suit, hence the suit was fatally defective. Because the preliminary objection raises the question as to whether the plaintiffs have a cause of action in the absence of an appropriate grant under the *Law of Succession Act*, I will dispose it before I deal with the application for interlocutory injunctive relief.
5. The preliminary objection was canvassed through written submissions dated 17/1/2022, filed by the firm of Kithi & Co Advocates. Counsel for the 1st to 14th defendants submitted that whereas the plaintiffs contended in the plaint that they became beneficiaries of the suit land upon the demise of their father who was the beneficial owner of the suit land, they had failed to demonstrate that they were the personal representatives of their deceased father or beneficiaries of the deceased estate as required by the law, hence they lacked the locus standi to initiate the suit. Counsel contended that under Section 82(a) of the *Law of Succession Act*, only personal representatives had the powers to institute, prosecute or defend suits on behalf of the deceased. Counsel contended that because the plaintiffs claim to have become entitled to the suit land as beneficiaries of the estate of their late father, they ought to have demonstrated that they were the personal representatives of their deceased father. They urged the court to strike out the suit in limine.
6. On their part, the plaintiffs filed written submissions dated 24/1/2021 through the firm of Kanyi Kiruchi & Co Advocates. Counsel submitted that what the deceased owned in the company were



shares which culminated in a balloting exercise pursuant to which the deceased became entitled to 1¼ acres of the company's land way back in 1989. Counsel contended that the company held land for its shareholders, denoted by the shares issued to them and therefore the relevant applicable law was the repealed *Companies Act* and not the *Law of Succession Act*. Counsel added that the company was governed by its memorandum and articles of association which did not require the filing of a succession cause in respect of a deceased shareholder before his shares are transferred. It was the position of counsel for the plaintiffs that all that the company required in order to effect a transfer of shares was proof of survivorship through the Chief's letter. Counsel cited Section 3 of the 1st Schedule, Table A, to support the above contention. Counsel urged the court to reject the preliminary objection.

7. I have considered the preliminary objection together with the parties' respective submissions on the preliminary objection. The single question that falls for determination in the preliminary objection is whether, without an appropriate grant under the *Law of Succession Act*, the plaintiffs have the locus standi to initiate or maintain a suit for recovery of land that allegedly belonged to their deceased father at the time of his death.

8. The plaintiffs pleaded as follows in paragraphs 5, 6, 7 and 8 of the plaint:

“(5) The plaintiffs are the bonafide allottees of land parcel Ruiru Kiu Block 2 (Githunguri) 3868 previously denoted by ballot number 1222 (herein after called the suit property which was previously owned by way of shares from Githunguri Constituency Ranching Co. Ltd (hereinafter called the company).

(6) That the suit parcel was previously owned by the plaintiffs' father one David Kabiru Macharia alias Kangethe Muchara who has since met his demise.

(7) That the deceased owned the suit parcel by way of shares and ballot, his share certificate being No 2199 issued way back on 5/9/1989 and ballot No 1222 issued by the company.

(8) That after the demise of the plaintiffs' father, and following the guidelines issued by the company his shares have duly transferred in favour of the plaintiffs and they were as well with a share certificate No B 3677 dated 29/10/2019. (sic)

9. It is clear from the above verbatim averments that the plaintiffs' case is that the suit land belonged to their late father at the time of his death and that they became entitled to the suit land upon the death of their father. Section 45 of the *Law of Succession Act*, Cap 160, contains the following framework on dealings relating to the property of deceased persons:

“(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall—

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled



after deducting any payments made in the due course of administration.”

10. The plaintiffs have not demonstrated to the court any provisions in a particular written law which exempted the suit land from the provisions of Section 45 of the Law of Succession Act. The position in law, in my view, is that upon the death of the late David Kabiru Macharia alias Kangethe Muchara, all his property formed part of his estate and was to be dealt with in accordance with the framework in the Law of Succession Act.
11. Under Section 79 of the Law of Succession Act, all the property of the deceased was vested in his personal representatives. For avoidance of doubt, Section 79 of the Law of Succession Act 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.”
12. Under Section 82 (a) of the Law of Succession Act, only the personal representative appointed under the Act is vested with the power 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. Section 82(a) of the Law of Succession Act provides thus:

“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;”
13. Based on the pleadings in the plaint and based on the above frameworks, it is clear that, for the plaintiffs to initiate and maintain a suit for recovery of the suit land which allegedly belonged to their late father at the time of his death, they need to first obtain a grant appointing them as their late father’s personal representatives. Unless and until they comply with the requirements of the Law of Succession Act, they have no locus standi to initiate or maintain a suit for recovery of land that allegedly belonged to their late father at the time of his death. That is my finding on the single issue in the preliminary objection dated 22/3/2022.
14. Consequently, the preliminary objection dated 22/3/2022 is upheld to the above extent and the plaintiffs’ suit is struck out in limine. The plaintiffs will bear costs of the suit.
15. The suit having been struck out, the plaintiffs’ application dated 25/1/2021 suffers the same fate.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 8TH DAY OF JUNE 2022**

**B M EBOSO**

**JUDGE**

**In the Presence of: -**

Ms Muchemi holding brief for Mr Kanyi for the Plaintiffs/Applicants

Ms Katana holding brief for Mr Kithi for the 1st – 14th Defendants/ Respondents

Court Assistant: Ms Lucy Muthoni

