



**Thiaka (Suing on behalf of Mary Jennifer Wandia by virtue of Power of Attorney registered as No 080/9/2018) v Macharia (Environment & Land Case 1 of 2019) [2022] KEELC 3949 (KLR) (26 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 3949 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 1 OF 2019**

**BM EBOSO, J**

**JULY 26, 2022**

**BETWEEN**

**MERCY MICERE THIAKA (SUING ON BEHALF OF MARY JENNIFER WANDIA BY VIRTUE OF POWER OF ATTORNEY REGISTERED AS NO 080/9/2018) ..... PLAINTIFF**

**AND**

**JULIUS MACHARIA ..... DEFENDANT**

**JUDGMENT**

1. This suit was originally initiated by Mary Jennifer Wandia, suing as the Chairperson of M/S Support the Poor Program. The original plaint was subsequently amended on December 23, 2019. The amendments brought on board Mary Micere Thiaka as the plaintiff, suing on behalf of Mary Jennifer Wandia by virtue of a power of attorney registered as No 080/9/2018. The new plaintiff pleaded in paragraph 3 of the amended plaint that Mary Jennifer Wandia was the registered owner of land parcel number Juja/Kalimoni Block 3/524 [the suit property]. She contended that in October 2018, the defendant illegally entered the suit property, destroyed the crops thereon, and commenced construction of a school on it. She sought, among other reliefs, a permanent injunction restraining the defendant against trespassing on the land. She also sought an order directing removal of all materials, buildings and/or structures from the suit property. Further, she sought general damages for the destroyed crops and for loss of user of the suit property. Finally, she sought costs of the suit.
2. The defendant entered appearance and filed a statement of defence dated February 5, 2020. He denied the allegations made in the plaint. He denied the plaintiff's contention that Mary Jennifer Wandia was the registered owner of the suit property. He denied trespassing on the suit property and contended that he was only a ward representative with no interest in the suit property. He averred that the plaintiff was not entitled to the reliefs sought against him in the plaint.



3. At the hearing, the plaintiff testified as PW1. She stated that she was a member of Support the Poor Program, a self-help group which was registered by the then Ministry of East African Community, Labour and Social Protection on February 26, 2008. On July 8, 2018, the group entered into a land purchase agreement with Thika Garissa Road Developers Limited, pursuant to which the group purchased the suit property, for a consideration of Kshs 5,000,000. She added that in 'the month of June 2018', goons invaded the land and cleared it ready for construction. On June 4, 2018, they made a complaint to the office of the area Member of Parliament after they had established that the said goons were hired by the defendant who was the area member of county assembly. Despite the defendant being warned to keep off the land, he continued to encroach on the land and proceeded to put up a school on the land. She closed her case at that point.
4. The defendant testified as DW1. He had not filed a written witness statement. He stated that the structures on the suit property were erected by the County Government of Kiambu. The structures consisted of two early childhood development [ECD] Classrooms. He denied being the person who erected the structures. He added that he was being targeted unfairly because he was the area member of county assembly. He faulted the plaintiff for not pursuing the County Government of Kiambu for redress. He added that he had no personal interest in the suit property.
5. During cross-examination, he stated that he 'gave the tender documents' relating to the structures on the suit property. He did not have approved development plans relating to the suit property. He did not have particulars of any pending complaints relating to the suit property.
6. The plaintiff subsequently filed written submissions through the firm of Etole & Co Advocates. I have read and reflected on the said written submissions in the context of the circumstances of this suit at this point.
7. I have considered the parties' pleadings and evidence. I have also considered the plaintiff's written submissions. It does emerge at this point that the original suit was filed by M/s Support the Poor Program through its chairperson, Mary Jennifer Wandia. For reasons that have not been disclosed to the court, the said Mary Jennifer Wandia did not want to pursue the claim in her name. However, instead of her requesting M/s Support the Poor Program to appoint another representative to pursue the claim on their behalf, she purported to donate a power of attorney to Mary Micere Thiaka. Regrettably, she had no legal powers to delegate her delegated mandate to Mary Micere Thiaka through a power of attorney. She could only go back to M/s Support the Poor Program and request the group to replace her with someone else. Put differently, the power of attorney donated to Mary Micere Thiaka did not confer in her the legal mandate to prosecute this suit on behalf of M/s Support the Poor Program. The organization is the only entity which could appoint Mary Micere Thiaka through an appropriate resolution.
8. Secondly, it does emerge that the County Government of Kiambu is a necessary party for the effectual and complete adjudication and settlement of the dispute relating to the structures that are on the suit property. Regretably, the County Government of Kiambu was not made a party to the suit. The defendant who made the disclosure during his evidence in chief did not file a witness statement earlier and therefore is partly responsible for the current state of affairs.
9. Taking the above circumstances into account, I take the view that the proper approach to take in this suit is to strike the suit out without venturing into the merits of the issues in this dispute. This will leave M/s Support the Poor Program with the option to bring a proper suit in the name(s) of its duly appointed representative(s) and against appropriate parties. Parties shall bear their respective costs of the present suit. Those are the disposal orders of the court.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 26<sup>TH</sup> DAY OF JULY  
2022**

**B M EBOSO**

**JUDGE**

**In the Presence of: -**

Ms Etole for the Plaintiff

Court Assistant: Ms Lucy Muthoni

