



Kingori & another (Suing as the Administrators of the Estate of Paul Kingori Mbeya –Deceased) v Mwangi & 3 others (Being sued as the Administrators of the Estate of Mwangi Kirung’o Kahama alias James Mwangi Kirung’o - Deceased) (Environment and Land Case Civil Suit 9 of 2020) [2022] KEELC 2473 (KLR) (14 July 2022) (Judgment)

Neutral citation: [2022] KEELC 2473 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE CIVIL SUIT 9 OF 2020**

EO OBAGA, J

JULY 14, 2022

BETWEEN

SALOME NJERI KINGORI 1ST PLAINTIFF

JOSEPH NJAU KINGORI 2ND PLAINTIFF

**SUING AS THE ADMINISTRATORS OF THE ESTATE OF PAUL KINGORI
MBEYA –DECEASED**

AND

HANNAH WANGARI MWANGI 1ST DEFENDANT

RUTH WANJIRU MWANGI 2ND DEFENDANT

JOHN KIRUNGO MWANGI 3RD DEFENDANT

SAMMY LONCE WAKAIMBA 4TH DEFENDANT

**BEING SUED AS THE ADMINISTRATORS OF THE ESTATE OF MWANGI
KIRUNG'O KAHAMA ALIAS JAMES MWANGI KIRUNG'O - DECEASED**

JUDGMENT

1. By a further amended Originating Summons dated 17th February, 2021, the Plaintiffs sought the following reliefs against the Defendants.
 1. That the Defendants, as joint administrators of the estate of Mwangi Kirungo Kahama alias James Mwangi Kirungo (deceased), be declared and decreed to be under legal obligation to transact in property Land Reference Number 13052 (original number 11940/1) measuring approximately 4.127 hectares and property title number Timboroa/Kipkurere Block 1 (Mutarakwa/364 measuring 1.619 hectares in respect of which the Plaintiffs are pursuing the



interests of the estate of Paul Kingori Mbeya (Deceased) who had acquired the same from James Mwangi Kirungo in his lifetime.

2. That the Defendants be ordered to effect registration of transfer of the certificate of title and title deed from James Mwangi Kirungo to Salome Njeri Kingori and Joseph Njau Kingori.
 - 2a) That the Defendants be ordered to effect registration of transfer of the certificate of title in respect of Land Reference Number 13052 (Original Number 11940/1 to Salome Njeri Kingori.
 - 2b) That the Defendants be ordered to effect registration of transfer of the title deed to property title number Timboroa/Kipkurere Block 1 (Mutarakwa) 364 to Salome Njeri Kingori and Joseph Njau Kingori.
 - 2(c) That in the event that the Defendants refuse/neglect/decline to release to the Plaintiffs the Original or Provisional Certificate of Title and title deed to facilitate registration of transfer of title, the court do issue an order compelling the Defendants to release the same to the Plaintiffs and/or if they do not have the certificate of title and title deed, the court do order/direct them to apply for provisional certificate of title, which, when issued will be surrendered to the Plaintiffs for purposes of effecting registration of transfer of titles.
 3. That in the event that the Defendants decline/refuse/neglect to execute the documents necessary for registration of transfer of the certificate of title from James Mwangi Kirungo to Salome Njeri Kingori and to Salome Njeri Kingori and Joseph Njau Kingori respectively, the court be pleased to order that the Deputy Registrar, High Court at Eldoret do execute all such documents as are necessary to facilitate the registration of transfer of title.
 4. That the Land Registrar/Registrar of title be ordered to rectify/amend the Land Registers relating to properties Land Reference number 13052(original number 11940/1) and property title number Timoboroa/Kipkurere Block 1 (Mutarakwa)/364 in such a manner as will reflect Salome Njeri Kingori and Salome Njeri Kingori and Joseph Njau Kingori as the registered proprietors of the said properties respectively.
 5. The costs of these proceedings be borne by the Defendants.
2. The Plaintiffs are the administrators of the estate of the late Paul Kingori Mbeya who died in 2006 (Mbeya). The defendants are the administrators of the late Mwangi Kirungo Kahama alias James Mwangi Kirungo who died in 1997 (Kirungo). The late Kirungo was the registered owner of LR No 13052 (original number 11940/1) measuring 4.127 hectares and LR. No. Timboroa/Kikure Block 1 (Mutarakwa/364 measuring 1.619 hectares (suit properties).
 3. Prior to the death of Kirungo, he had sold the suit properties to Mbeya but as at the time of his death, he had not transferred the suit properties to Mbeya. The suit properties are said to have been sold in 1986. The Plaintiffs took possession of the same in 1989. When Mbeya died in 2006, his remains were interred on LR. No 13052 (original number 11940/1).
 4. The late Kirungo had surrendered the original title in respect of LR. No. Timboroa/Kipkure Block 1 (Mutarakwa/364 to MS. Kalya & Co. Advocates who were acting for the late Mbeya. The Original title was surrendered to the present Counsel for the Plaintiff.
 5. The suit against the 2nd Defendant was withdrawn on 1st November 2021. The parties agreed to dispose of the Originating Summons through written submissions. The Plaintiffs filed their submissions dated



- 17th march, 2022. The 1st and 3rd Defendants filed their submissions dated 10th May, 2022. The 4th and 5th Defendants did not enter appearance and therefore did not file any submissions.
6. I have carefully considered the submissions by the Plaintiff and those of the 1st and 3rd Defendants. I have also considered the affidavit in support of the originating summons and those in opposition of the same. The issues which emerge for determination are firstly, whether Kirungo sold the suit properties to Mbeya. Secondly, are the Defendants legally obligated to sign transfer forms in favour of the Plaintiffs in respect of the suit properties. Thirdly, who is to bear costs of this suit.
 7. There is no dispute as to who is in possession of the suit properties. The Plaintiffs have been in possession of the suit properties for over three decades. The suit properties particularly LR. No 13052 (original number 11940/1) is extensively developed. The remains of the late Mbeya were interred there. The 1st Plaintiff who is widow of Mbeya resides there. During the lifetime of Mbeya, he sold ¾ of an acre which he subdivided into plots of 1/8 of an acre which he sold to individuals. These plots about the Eldoret - Nakuru Road and have developments thereon.
 8. The 1st and 3rd Defendants are sisters to the 4th and 5th Defendants but all the four are administrators of the estate of Kirungo. It is however evident that the two sisters and their two brothers have serious differences over the running of the affairs of the estate of Kirungo.
 9. The 4th and 5th Respondents acknowledge that they are aware that Kirungo sold the suit properties to Mbeya. This is clear from the correspondence exchanged between the Advocates for the 4th and 5th Defendants and the counsel for the Plaintiff. This explains why the suit properties were never listed as part of the properties belonging to the estate of Kirungo.
 10. In a letter dated 12th April, 2021 Ms. Harit Sheth Advocates who were previously acting for the 4th and 5th Defendants wrote to the Plaintiffs' counsel and confirmed that the suit properties were not part of the estate of Kirungo and that the 4th and 5th defendants were not going to participate in the court case as Kirungo had already sold the suit properties to the late Mbeya.
 11. The same confirmation came from the present lawyers of the 4th and 5th Defendants Ms. Waweru Gatonye & Co. Advocates who stated in their email 16th June, 2021 that the 4th and 5th Defendants were willing to sign transfer forms and applications for land control board to facilitate transfer of the suit properties to the Plaintiffs.
 12. In yet another email dated 10th June, 2021, Ms. Waweru Gatonye & Co. Advocates confirmed that indeed the late Kirungo had sold the suit properties to the late Mbeya and had even deposited original title to L.R No Timboroa/Kipkure Block 1 (Mutarakwa/364) to his then Advocate Ms. Kalya & Co. Advocates. The firm of Ms. Kalya & Co. Advocates had even called upon Paul Kingori Mufia to go and collect the title together with consent to transfer and application for consent of land control board but Paul Kingori Mufia did not collect the documents until he died.
 13. Despite the 1st and 3rd Defendants acknowledging the fact that it is the 4th and 5th Defendants who are in the know about the sale, they have again turned around and claimed that there is no evidence of any sale agreement which has been exhibited. They argue in their submissions that section 3(3) of the [Law of contract Act](#) provides that an agreement for sale of land must be in writing and must be witnessed. The suit properties were said to have been sold in 1986. The requirement of section 3(3) of the [Law of Contract Act](#) were introduced in 2003.
 14. The sale having been acknowledged by the 4th and 5th Defendants who have been administering the estate of the late Kirungo since his demise, the 1st and 3rd Defendants cannot be heard to raise the issues of sale agreement and lack of consent of the land Control Board. It is clear that the 1st and 3rd



Defendants are merely out to frustrate the transfer due to their differences between them and their two brothers who are the 4th and 5th Defendants. I therefore find that indeed, the late Kirungo sold the suit properties to the late Mbeya.

15. On the second issue, there is no contention that the 1st and 3rd Defendants are co-administrators with the 4th and 5th Defendants. The four are all administering the estate of the late Kirungo. They cannot run away from their responsibility by merely claiming that they have been excluded from running of the affairs of the estate of their father, the late Kirungo by their two brothers. Once the two were appointed as co-administrators, they are under obligation to do all that is required of them. A similar issue was addressed by Justice Musyoka in *In Re Estate of Makokha Idris Khasabuli (Deceased)* (2019) eKLR where the Judge directed that all the administrators were under an obligation to administer the estate of the deceased as one corporate body and that none of them should administer the estate to the exclusion of the other. I therefore find that the 1st and 3rd defendants as well as the 4th and 5th Defendants are under obligation to sign all the necessary documents to facilitate transfer of the suit properties to the Plaintiffs as specified in the originating summons.
16. On the third issue it is trite law that costs follow the event. In *Republic -Vs- Rosemary Wairimu Munene, Ex-parte Applicant -Vs- Ihururu Dairy Farmers Co-Operative Society Limited*, Judicial Review Application No. 6 of 2014 it was held as follows:-

“The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event.....it is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case”.
17. This is a matter which should have not come this far. At some stage, the parties counsel indicated to court that this is a matter which could be settled out of court. This however did not happen. This is because the 1st and 3rd Defendants decided to play hard ball due to their selfish interest arising out of their differences with the 4th and 5th Defendants. The Defendants have in the circumstances to pay costs to the Plaintiffs.
18. From the above analysis, it is clear that the Plaintiffs have proved their case on a balance of probabilities. The Plaintiffs in their submissions dropped prayer 3. I therefore enter Judgment against the Defendants in terms of prayers (1) 2(a), 2(b) (4) and (5) of the further amended originating summons dated 17th February, 2021.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 14TH DAY OF JULY, 2022.

E. OBAGA

JUDGE

In the virtual presence of;

Ms. Omwenyo for Plaintiff

Court Assistant -Albert

E. OBAGA

JUDGE

14TH JULY, 2022

