



Ngayuni v Ngayuni (Sued as the Administratrix of Elijah Wagura Ngayuni - Deceased) (Environmental and Land Originating Summons 5 of 2021) [2025] KEELC 3119 (KLR) (3 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3119 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 5 OF 2021**

JO OLOLA, J

APRIL 3, 2025

BETWEEN

JOHN WAGURA NGAYUNI PLAINTIFF

AND

MARGARET NJOKI NGAYUNI DEFENDANT

**SUED AS THE ADMINISTRATRIX OF ELIJAH WAGURA NGAYUNI -
DECEASED**

JUDGMENT

1. By an Originating Summons dated 31st May, 2021, John Wagura Ngayuni (the Applicant) prays for the following:
 - a. A declaration that the deceased Ngayuni Kariuki alias Elijah Ngayuni Kariuki held the parcel of land L.R No. Tetu/Muthuaini/611 (the Suitland) in trust for the benefit of Naomi Kirigo (deceased);
 - b. A declaration that the administration of the Estate of Ngayuni s/o Kariuki alias Elijah Ngayuni Kariuki should be done subject to the pleaded trust;
 - c. An order that the pleaded trust be determined within the administration of the Estate of Ngayuni S/o Kariuki alias Elijah Ngayuni Kariuki in favour of the Applicant to hold the same in trust for the children of Naomi Kirigo (deceased);
 - d. Costs and interests.
2. The Originating Summons is supported by an affidavit sworn by the Applicant wherein he avers that the Respondent is the Administrator of the Estate of Ngayuni S/o Kariuki alias Elijah Ngayuni Kariuki who passed away on 25th July, 2003.



3. The Applicant avers that during his lifetime, the deceased who was the registered proprietor of the suit property had three wives, namely Naomi Njoki (the Applicant's mother), Muthoni Ngayuni and Margaret Njoki Ngayuni (the Respondent herein). The Applicant asserts that his mother separated with the deceased in the year 1964 and that his mother and her children were chased away from the Suitland by the deceased.
4. Margaret Njoki Ngayuni, sued as the Administratrix of the Estate of Elijah Wagura Ngayuni (the Respondent) is opposed to the grant of the orders sought in the Summons. In her Replying Affidavit sworn and filed on 15th September, 2022, the Respondent asserts that the suit is misconceived, incompetent, bad in law, frivolous and vexatious.
5. The Respondent denies that the suit property was registered in the name of her deceased husband in trust for the Applicant's mother. She further denies the allegation that the Suitland belonged to Githiru Kiboi who was the Applicant's maternal grandfather.
6. At the trial herein, the Applicant called two (2) witnesses in support of his case while the Defendant called one (1) witness.

Analysis and Determination

7. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties.
8. By his suit as filed herein, the Applicant urges the court to declare that his late father Ngayuni Kariuki alias Elijah Ngayuni Kariuki held the parcel of land known as Tetu/Muthuaini/611 (the suit property) in trust for the Applicant's mother one Naomi Kirigo. The Applicant further urges the court to declare that the administration of the estate of his deceased's father be done subject to the pleaded trust and that the said trust be determined in his favour to hold the land in trust for the children of the said Naomi Kirigo who is deceased.
9. In support of his case, the Applicant and his sole witness told the court that the suit property initially belonged to his maternal grandfather one Gichiru Kiboi who had in the year 1943 gifted the same to the Applicant's mother, the said Naomi Kirigo to reside in with her then husband the late Elijah Ngayuni Kariuki.
10. It was the Applicant's case that sometime in the year 1964, his mother separated with his father and the father chased away his mother together with her children from the land. The Applicant further told the court that in 1977, his mother had sued his father claiming the Suitland but the mother passed away in 1988 before the case was heard.
11. On her part, the Respondent who is the Administratrix of the Estate of the said Elijah Ngayuni Kariuki denied that her deceased husband had held the land in trust for the Applicant's mother. She told the court that the deceased was registered as proprietor of the Suitland on 31st July, 1958 and that when she got married she found her husband on the land as the sole proprietor thereof.
12. As it were, it is trite law that he who alleges must prove in accordance with Sections 107 and 108 of the *Evidence Act* (Cap 80 of the Laws of Kenya). That being the case, it was incumbent upon the Applicant to prove that the suit property initially belonged to his maternal grandfather the said Gichiru Kiboi and that he had indeed gifted the same to his mother Naomi as claimed.



13. As it turned out, there was no such evidence placed before the court. The Applicant told the court that he was born in 1950 and that he had only been told about what happened by his mother before her death in the year 1988.
14. While it is indeed true that his mother instituted Nairobi HCCC No. 2249 of 1977 against his father, that suit related to a parcel of land Known as Tetu/Muthuaini/64 measuring some 4.9 acres. The Applicant did not lead any evidence to demonstrate any relationship between the said property and the suit property herein referred to as Tetu/Muthuaini/611.
15. Even where it could be said that the property claimed in the 1977 case was the same as the suit property herein, there was no explanation why the Applicant did not proceed with the suit after his mother's death in 1988. From the Applicant's own testimony in court his father lived on for another 15 years after the mother's death before passing away in the year 2003. There was no explanation why he never took up the matter of trust now that he was aware of the same. I did not think it was open for him to wait for another 20 years after the death of his father before springing this claim on his step-mother as the administratrix of the estate. His claim even if it had any basis is clearly one that is stale and barred by statute.
16. It was also evident that while he claimed the property on behalf of his mother, the Applicant admitted at the trial herein that he had not taken out any letters of administration for the estate of his deceased mother.
17. It follows that I was not persuaded that there was any merit in the Originating Summons. I dismiss the same with costs to the Respondent.

JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 3RD DAY OF APRIL, 2025

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J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Kinyua Njogu Advocate for the Applicant
- c. Mr. Wahome Gikonyo Advocate for the Respondent

