



**Mwai & 8 others v Magondu (Sued as the Administrator of the estate of Francis Magondu Githinji); Magondu & 2 others (Interested Parties) (Environment & Land Case 9 of 2014) [2022] KEELC 12720 (KLR) (28 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12720 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NYERI**  
**ENVIRONMENT & LAND CASE 9 OF 2014**  
**JO OLOLA, J**  
**SEPTEMBER 28, 2022**

**BETWEEN**

**DAVID KINYUA MWAI ..... 1<sup>ST</sup> PLAINTIFF**  
**ZACHARY MWANGI MUTURI ..... 2<sup>ND</sup> PLAINTIFF**  
**WACHIRA KARIUKI MACHARIA ..... 3<sup>RD</sup> PLAINTIFF**  
**PAULINE WAMUHU MURIITHI ..... 4<sup>TH</sup> PLAINTIFF**  
**JOHN MUTHEE MUCHEMI ..... 5<sup>TH</sup> PLAINTIFF**  
**LOISE WANJIRA MUTHOGA ..... 6<sup>TH</sup> PLAINTIFF**  
**EPHRAIM NGURE ..... 7<sup>TH</sup> PLAINTIFF**  
**ROSE WACUKA KANENE ..... 8<sup>TH</sup> PLAINTIFF**  
**CHARLES NJOROGE KARIUKI ..... 9<sup>TH</sup> PLAINTIFF**

**AND**

**LOISE WANGARI MAGONDU ..... RESPONDENT**  
**SUED AS THE ADMINISTRATOR OF THE ESTATE OF FRANCIS MAGONDU**  
**GITHINJI**

**AND**

**WILSON MACHARIA MAGONDU ..... INTERESTED PARTY**  
**JOHN GIKANDI MAGONDU ..... INTERESTED PARTY**  
**JOSEPH GITHINJI MAGONDU ..... INTERESTED PARTY**



## RULING

1. By the notice of motion dated October 7, 2020, Wilson Macharia Magondu, John Gikandi Magondu and Joseph Githinji Magondu (the applicants) pray for orders that:
  - (b) The court be pleased to enjoin the applicants as necessary parties in this suit;
  - (c) Pending the hearing and determination of the application, the court be pleased to stay the adoption of a partial agreement allegedly obtained through the process of court annexed mediation between the plaintiff and the defendant;
  - (d) The court be pleased to make such orders necessary to meet the ends of justice that will not engender (sic) the parties herein and the estate as a whole by preserving the right to be heard; and
  - (e) This court be pleased to either proceed with the hearing and determination of the matter or subject the same to court annexed mediation directing the participation of the interested parties herein;
  
2. The application is supported by an affidavit sworn by the 1<sup>st</sup> applicant – Wilson Macharia Magondu and is premised on the grounds that:
  - (i) This suit was as a result of directions given in Nyeri High Court Succession Cause No 650 of 2001 in which the plaintiffs were directed to prove their claim to the estate by way of a suit;
  - (ii) The defendant is a legal representative/administrator whose role is circumscribed by section 79, 82 and 83 of the *Law of Succession Act*;
  - (iii) This matter was screened and recommended to proceed under the court annexed mediation and as a result thereof, there is alleged to be a partial settlement reached between the plaintiffs and the defendant;
  - (iv) The said partial agreement has not taken into account the participation of the applicants or the other beneficiaries yet they are directly and prejudicially affected by the said turn of events;
  - (v) The said settlement has not been reached in consultation with or in agreement with the bulk of the beneficiaries of the estate on whose behalf the defendant has been sued;
  - (vi) The defendant's duty as the administrator has exceeded the legal mandate expressed in the appointing statute and process;
  - (vii) It is not only just and mete but for the good and beneficial outcome that all acts that may impact prejudicially on the estate should be with the consent and consultation with the beneficiaries;
  - (viii) The defendant's action is tantamount to usurping the rights of beneficiaries to part of the estate; and
  - (ix) It is just and mete to grant the orders sought.
  
3. The nine (9) plaintiffs are opposed to the application. In a replying affidavit sworn on their behalf by the 1<sup>st</sup> plaintiff David Kinyua Mwai and filed herein on October 27, 2021, the plaintiffs concede that they filed this suit pursuant to directions given in Nyeri High Court Succession Cause No 650 of 2001.



The plaintiffs however aver that as at the time the orders were made the respondent Loise Wangari Magondu was the administrator of the estate of Francis Magondu Githinji Mwara and the applicants herein not being administrators of the estate are strangers to these proceedings.

4. The plaintiffs assert that the applicants ought to move the succession court and seek to be made co-administrators after which they can seek to be joined as interested parties otherwise they have no locus in the matter herein. The plaintiffs further aver that the partial agreement has been overtaken by events as the parties have since reached a full settlement filed herein in court on May 31, 2021.
5. I have carefully perused and considered the application as well as the response thereto. I have similarly perused and considered the rival submissions and authorities placed before me by the learned advocates representing the parties. The respondent – Loise Wangari Magondu filed submissions in support of the application.
6. The three applicants herein pray to be enjoined as interested parties in the suit herein. It is their case that the defendant herein has been sued in her capacity as the legal representative and administrator of the estate of the late Francis Magondu Githinji. On the basis of the suit herein, the applicants contend that they have since learnt that the defendant/respondent is in the process of entering into a settlement with the plaintiffs which settlement is likely to prejudice them as the beneficiaries of the estate and hence the need for their participation.
7. As was stated by the supreme court in *Trusted Society of Human Rights Alliance -vs- Mumo Matemo & 5 Others (2015) EKLK*:

' ... an interested party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is one who will be affected by the decision of the court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings and champions his or her cause.'

8. The guiding principles for consideration before enjoinder of an interested party to a suit were again articulated by the supreme court in *Raila Amolo Odinga & Another -vs- Independent Electoral and Boundaries Commission & 2 Others (2017) eKLR* where the court held as follows:

' One must move the court by way of a formal application. Enjoinder is not as of right, but is at the discretion of the court, hence, sufficient grounds must be laid before the court, on the basis of the following elements:

- (i) The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
- (ii) The prejudice to be suffered by the intended interested party in a case of non-joinder must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.
- (iii) Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court.'



9. From a perusal of the record herein, it is apparent that this suit was commenced pursuant to the Judgment of the Honourable Justice JK Serگون dated and delivered on November 2, 2012 in the said Nyeri High Court Succession Cause No. 650 of 2001. At page 15 of the judgment annexed to the applicant's supporting affidavit, the learned judge states as follows:

' ... The fairest order I can make in this cause in view of the evidence presented is to postpone the confirmation of the grant until the protesters who allege to be purchasers of the estate and land have established their claim. I hereby make an order staying further proceedings in this succession cause and direct the protesters who are not beneficiaries to this estate to take out the relevant proceedings against the estate to prove their claims within three (3 months) from the date of this Judgment.'

10. Arising from the said judgment the nine (9) plaintiffs instituted this suit against Loise Wangari Magondu in her capacity as the administrator of the estate of Francis Magondu Githinji. As it were 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 a personal representative.'

11. The powers of such a personal representative are then enumerated under section 82 of the act. Those powers include the power 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. The personal representatives may also sell or otherwise turn to account all or any part of the assets vested in them, as they think best.

12. Arising from the foregoing, I was not persuaded that enjoining the applicants herein as interested parties would serve any logical or useful purpose. The suit properties are clearly in the name of the late Francis Magondu Githinji whose estate has been put under the administration of the defendant/ respondent.

13. If indeed as the applicants claim the defendant is of an advanced age with issues about her mental capacity, then this is clearly the wrong forum to articulate such views. If that were the case, the applicant should head back to the same Succession Cause No 650 of 2001 and seek to be added as administrators of the estate whereupon they would be clothed with the power to deal with the estate in the manner that they may desire.

14. It follows that I am not persuaded that there is any merit in the motion dated October 7, 2020. The same is dismissed with costs.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2022.**

**In the presence of:**

Ms Mwangi holding brief for Muhoho for the Respondent

Ms Miriti holding brief for Nderi for the Interested Party

No appearance for the Respondent

Court assistant - Kendi

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**J. O. Olola**  
**JUDGE**

