



**Wahiu & 2 others v Wahiu & another (Environment & Land Case  
239 of 2018) [2022] KEELC 14883 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 14883 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 239 OF 2018**

**AK BOR, J**

**SEPTEMBER 23, 2022**

**BETWEEN**

**ALEXANDER ANTHONY WAHIU ..... 1<sup>ST</sup> PLAINTIFF**

**SAMUEL MWAI ..... 2<sup>ND</sup> PLAINTIFF**

**NICHOLAS MUIRURI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**JOSEPH KARIHA WAHIU ..... 1<sup>ST</sup> DEFENDANT**

**THUMBI KAMAU ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This court heard this suit and vide its ruling dated 9/8/2021, it stayed the suit pending the determination of Nairobi HCCC No. 43 of 2010 (O.S) and Nairobi High Court Miscellaneous Civil Application Number 10 of 2006 in which the Family Division of the High Court at Milimani was to make a finding on the share the plaintiffs' late mother was entitled to in the suit land. In that ruling, the court observed that the claim by the plaintiffs' late mother to the suit land survived her death and her children would be the dependants of her estate. the court indicated that the plaintiffs ought to take out letters of administration and substitute their late mother in the two suits. The plaintiffs contend in this suit that it is their late mother who developed the suit land. A determination as to whether or not the plaintiffs' late mother developed the suit land can only be made by the Family Division.
2. Being alive to the constitutional imperative to administer justice without undue regard to procedural technicalities which under article 159 is one of the principles to guide the court when it exercises judicial authority, this suit will be stayed for six months for the plaintiffs to take out letters of administration in the Family Division and thereafter pursue the assets of their late mother including her share, if any, in the suit land.



3. Thereafter, this case will be disposed of by a Judge sitting in the Environment and Land Court at Nairobi where the suit land is situated. That is the court which has jurisdiction over the matter following my transfer to the Environment and Land Court at Nanyuki.

**DELIVERED VIRTUALLY AT NANYUKI THIS 23RD DAY OF SEPTEMBER 2022.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Mr. Stanley Kingara for the Plaintiffs

Mr. D. Mikwa holding brief for Mr. M. Gitonga for the 2nd Defendant

Ms. Stella Gakii- Court Assistant

No appearance for the 2nd Defendant

