



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ngala v Munyoga & 2 others (Environment & Land Case 79 of 2019)  
[2022] KEELC 14685 (KLR) (9 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14685 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 79 OF 2019  
MAO ODENY, J  
NOVEMBER 9, 2022**

**BETWEEN**

**UCHI KEA NGALA ..... PLAINTIFF**

**AND**

**CHENDA KAPITA MUNYOGA ..... 1<sup>ST</sup> DEFENDANT**

**CHIEF LAND REGISTRAR KILIFI ..... 2<sup>ND</sup> DEFENDANT**

**LANDS REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of a notices of preliminary objection dated 7<sup>th</sup> October 2021 by the 1<sup>st</sup> Defendant on the grounds that: -
  - a) The plaintiff has no locus standi to bring this suit on behalf of the Estate of Muvyoga Baya (Deceased) and Kupita Muvyoga (Deceased) without having a grant of letters of administration.
  - b) This court has no jurisdiction to hear and determine matters related to succession.
  - c) This suit is bad in law and the same be dismissed with costs.
2. Counsel agreed to canvas the preliminary objection by way of written submissions.
3. Counsel for the 1<sup>st</sup> defendant submitted that the plaintiff filed this suit in her capacity as the heir or beneficiary of her late husband Kapita Muvyoga who was allocated the land in dispute in Kaloleni/ Madzimbani by his father and her father in law, Muvyoga Baya.



4. It was counsel's submission that she ought to have obtained a grant of letters of administration prior to filing the present suit.
5. In response counsel for the plaintiff submitted that the plaintiff filed the present suit in her own capacity as the owner of a portion of the land in dispute and not on behalf of the estate of Muvyoga Baya. Further that it was the plaintiff's case that prior to the demise of Kapita Muvyoga he had subdivided the land into two portions for his two wives being the plaintiff and the 1<sup>st</sup> defendant.

### **Analysis and Determination**

6. I have considered the issues raised on *locus standi* of the plaintiff and the principles of preliminary objections as per the *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd*. [1969] EA 696, case and find that the issue for determination is whether this objection meets the threshold and whether it has merit.
7. From the pleadings it is evident that the plaintiff acknowledges that the 1<sup>st</sup> defendant is her co wife and at the time of adjudication the 1<sup>st</sup> defendant was registered as an owner of the suit land while she was away.
8. There is also a letter dated 19<sup>th</sup> March 2013 from the District Land Adjudication and Settlement officer Kilifi that due to her absence during adjudication, she will have to wait for the title deed to be issued and then seek for separation of the title.
9. The plaintiff's case is that the 1<sup>st</sup> defendant fraudulently misrepresented herself to the Land Adjudication and Settlement Officer as the sole beneficial owner of the suit property which is ancestral land.
10. The plaintiff in her plaint dated 19<sup>th</sup> September 2019 sought inter alia a declaration that the suit property is ancestral land belonging to the plaintiff and the 1<sup>st</sup> defendant and that the 1<sup>st</sup> defendant holds the same in trust for the plaintiff; a mandatory injunction compelling the 1<sup>st</sup> defendant to execute transfer documents and the 2<sup>nd</sup> defendant to effect a rectification of the register to include the names of the plaintiff as owner in common with the 1<sup>st</sup> defendant.
11. I do not see anywhere in that plaint where the plaintiff is seeking those orders on behalf of the estate of the deceased. If that was the case, then she would not have *locus standi* to institute this suit. The title that she intends to impeach as per section 26 (1) of the [Land Registration Act, 2012](#) is registered in the name of the 1<sup>st</sup> defendant and not in the deceased name.
12. If the plaintiff had purported to sue on behalf of the estate, then definitely she would have been required to seek and obtain letters of administration to enable her have locus standi to sue. This is not the case here.
13. The upshot is that the preliminary objection lacks merit and is therefore dismissed with costs.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 9TH DAY OF NOVEMBER, 2022.**

**M.A. ODENY**

**JUDGE**

**NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.**

