



REPUBLIC OF KENYA



**Wanjiku & 2 others v Mwaniki (Environment & Land Case 289 of 2018)
[2022] KEELC 15481 (KLR) (20 December 2022) (Judgment)**

Neutral citation: [2022] KEELC 15481 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 289 OF 2018**

JG KEMEI, J

DECEMBER 20, 2022

BETWEEN

LYDIA WANJIKU 1ST PLAINTIFF

SOLOMON NJAU KAMUNGE 2ND PLAINTIFF

MARGARET WACUKA GITHINJI 3RD PLAINTIFF

AND

RICHARD NJUGUNA MWANIKI DEFENDANT

JUDGMENT

1. The plaintiffs filed this suit against the defendant on November 23, 2018 seeking the following orders;
 - a. A declaration that all that parcel of land known as Kabete/Nyathuna /1522 (suit land) is family land.
 - b. A declaration that the transfer of the suit land from the deceased to the defendant was fraudulently and unprocedurally done and therefore null and void.
 - c. A mandatory order to issue directing the lands registrar Kiambu lands office or any other relevant officer to cancel the title issued to the defendant in respect to the suit land and also a further order to cancel amend and to rectify the respective green card and or any record maintained by the said lands office in respect of the said parcel of land and subsequently re-issue a fresh title in respect of the suit land in favour of the deceased namely Lucy Gathoni Njau/estate.
 - d. Costs of the suit
2. The plaintiffs aver that at all material times to the suit the plaintiffs are members of the family and dependants of Lucy Gathoni Njau deceased and dependents of the suit land. It is their case that the



- defendant has caused the land to be registered in his name in a fraudulent and unprocedural manner and urged the court to cancel the title. They have pleaded particulars of fraud and illegality under para 7 of the Plaintiff.
3. Despite service of the summons the defendant did not file any defence against the suit.
 4. At the hearing the plaintiff's case was led by Solomon Njau Kamunge who relied on his witness statement dated November 15, 2018 as his evidence in chief. He also produced documents marked as pex 1-6. He informed the court that The defendant forged the signature of their grandmother Lucy Gathoni, the registered owner of the suit land and caused the land to be registered in his name. That their whole family live on the land including the defendant. That the defendant is his cousin and the grandson of Lucy Gathoni. That the defendant was charged for forgery and jailed for one year. That diplomatic means to resolve the matter have failed as the defendant is not cooperative in having the title revert back to the deceased previous owner.
 5. With that the Plaintiff closed their case.
 6. I have considered the submissions filed by the advocate for the plaintiff.
 7. Having read and considered the pleadings the evidence led at the trial and the written submissions the issues for determination are; whether the suit is competent; whether the plaintiff has proved fraud; whether the title should be cancelled and who meets the cost of the suit.
 8. Before I deal with the issues raised there is a fundamental issue on locus of the plaintiffs to file this suit. The plaintiffs have introduced themselves as relatives of the late Lucy Gathoni the registered owner of the land. It is trite that for one to sue on behalf of a deceased person the suit must be filed by the legal administrators of the deceased.
 9. In this case there is no evidence that the plaintiffs have been appointed as such and in my view they have no locus to step into the shoes of Lucy and advert a title that was registered in the name of Lucy before they are appointed as legal administrators in the first place.
 10. They have not showed the court that they are clothed with the requisite authority to bring this claim on their behalf. In the case of *Troustik Union International & Anor vs Jane Mbeyu & Anor* CA 145 OF 1990 the court held that where a party seeks to file a suit on behalf of the estate of a deceased person he must of necessity obtain letters of administration before filing the suit.
 11. For that reason therefore I find that the suit before me is incompetent for want of locus and the same is struck out with no orders as to costs.
 12. It is so ordered.

DELIVERED, DATED AND SIGNED AT THIKA THIS 20TH DAY OF DECEMBER, 2022 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Ms Wamboi for 1st, 2nd and 3rd plaintiffs

Defendant – Absent

Court assistant – Phyllis / Kevin

