



**Guracha v Guracha & others (Environment & Land Case  
81 of 2013) [2023] KEELC 16217 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16217 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 81 OF 2013**

**MAO ODENY, J**

**MARCH 9, 2023**

**BETWEEN**

**KAHASO SULUBU GURACHA ..... PLAINTIFF**

**AND**

**THE THE GURACHA & OTHERS ..... DEFENDANT**

**RULING**

1. The Plaintiff herein sued the Defendants vide a Plaint dated May 24,2013 seeking the following orders:
  - a. A declaration order declaring that the Plaintiff holds the beneficial rights over the land known as Gede/Dubaso/147 which forms part of the Estate of the Deceased on her behalf and in trust of the children and dependants of the Deceased John Guracha Mwambire having acquired such rights from the marriage conducted under the Giriama customary law.  
or
  - b. A declaration that the Plaintiff is entitled to the land by virtue of having been given the custody, utilization, acquisition and possession of the same by Naomi John Guracha (now deceased) during her lifetime and at her death, where the plaintiff has lived for a period of more than 28 years and which land Naomi John Guracha has acquired by inheritance from and succession of her husband John Guracha Mwambire, the registered.  
or
  - c. A declaration that the plaintiff has acquired the title by adverse possession to the title of the land known as Gede/ Dubaso /147 now registered in the name of John Guracha Mwambire, having lived in, developed and utilized the land continuously for a period of more than 28 years uninterrupted.



- d. A Mandatory injunction order to issue compelling the defendant to surrender to the plaintiff, the title to the land known as Gede/Dabaso/147 and the original death certificate of the late John Mwambire Guracha for the purpose of enabling the plaintiff to administer the estate of the deceased and thereafter a perpetual injunction to issue against the defendant, his agents, servants or assigns or anyone whomsoever acting under him restraining them from entering, remaining and/or utilizing any portion or part of the land within that land registered as Gede/Dabaso/147 belonging to the Estate and registered in the name of John Guracha Mwambire (Deceased).
  - e. Costs of the case.
2. From the record, only the evidence of PW1 was taken way back in 2016 and was thereafter stood down to await the outcome in High Court Succession Case No 30 of 2017.
  3. The Judgment in the Succession Cause was delivered on June 24, 2022 in favour of the objector who is the Plaintiff in this suit. When the matter came up for a mention on June 30, 2022 the Plaintiff's Advocate sought to have the judgment in the succession Cause No 30 of 2017 adopted as an order of the court in this ELC matter. The Defendant Advocate on the other hand told the court that they had preferred an appeal against the judgment in the Succession Cause.

### **Analysis And Determination**

4. The issue for determination is whether this court can adopt the judgment in a Succession Cause as the Judgment in this case.
5. I have considered the nature of the dispute as well as the history of the matter and further perused the judgment in Succession Case No. 30 of 2017 where the High Court held in favour of the Objector and the objector was confirmed as the heir to the Estate of John Mwambire (Deceased) by virtue of the fact that she was married to his sole heir Naomi John Mwambire.
6. In the Judgment by Justice Nyakundi, the crux of the matter between the parties was whether the objector was indeed married to Naomi John Mwambire and who ought to be the proper heir of the Estate of John Mwambire Guracha (Deceased).
7. The issues that the Succession Cause dealt with were as to whether there exists "woman to woman marriage under the Giriama customs, if there existed such marriage, was the Plaintiff married to Naomi John Mwambire, and if yes, does the estate of John Mwambire (deceased) devolve to the Plaintiff.
8. The issues for determination in this case taking into consideration the orders that the Plaintiff is seeking, would be whether the Plaintiff is entitled to the suit land, whether the Plaintiff has proved adverse possession, whether the Plaintiff has met the threshold for grant of a mandatory injunction to compel the Defendant to surrender the title to the suit land to the Plaintiff to administer the estate of the deceased.
9. The above issues were not and cannot be handled in the Succession Cause as the Court that has such jurisdiction is the Environment and Land Court. The judgment in the Succession Cause can be used as a persuasive one and cannot be adopted by this court and many issues remain unresolved in this case.
10. If the parties were satisfied with the judgment, then they should have filed a consent in terms of the judgment and marked the matter as settled but the court cannot wholly adopt the judgment of another court where the issues for determination are different. I also note that the Defendant has since passed on and has remained unsubstituted to this day bearing in mind that this a matter that was filed way back in 2013.



11. The upshot is that this application is dismissed and order that this matter be fixed for hearing and determination on merit within 30 days. Each party to bear their own costs.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 9<sup>TH</sup> DAY OF MARCH, 2023**

**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.

