



**Waitara (Suing for and on behalf of the Estate of Hanna Njeri Waitara alias Njeri Waitara) v Gatua (Environment & Land Case E088 of 2021) [2023] KEELC 16741 (KLR) (13 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16741 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E088 OF 2021  
BM EBOSO, J  
MARCH 13, 2023**

**BETWEEN**

**PETER KUNGU WAITARA (SUING FOR AND ON BEHALF OF THE ESTATE OF HANNA NJERI WAITARA ALIAS NJERI WAITARA) ..... PLAINTIFF**

**AND**

**FLORENCE WAIRIMU GATUA ..... DEFENDANT**

**JUDGMENT**

1. Peter Kungu Waitara brought this suit in his capacity as the administrator of the estate of the late Hanna Njeri Waitara also known as Njeri Waitara (hereinafter referred to as “the deceased”). Through a plaint dated 12/8/2021, he sought judgement against the defendant for:
  - a) A declaration that the deceased, Njeri Waitara alias Hanna Njeri Waitara is the legal owner of land parcel Gatuaryaga/Ngoliba Block 1/1770.
  - b) That the defendant’s title to land parcel Gatuaryaga/Ngoliba Block 1/1770 be cancelled and the same be registered in the name of the plaintiff as an administrator to the estate of Njeri Waitara alias Hanna Njeri Waitara deceased.
  - c) costs
2. The plaintiff’s case was that the late Hanna Njeri Waitara alias Njeri Waitara was his mother and was a shareholder of Gatundu Nyakinyua Company. The deceased balloted for Plot Number 1770 denoting the suit property. On 4/11/2016, Gatundu Nyakinyua Company issued him with a clearance certificate confirming the suit property belonged to the deceased. He added that the defendant had fraudulently caused the suit property to be registered in her name.



3. On 9/5/2022, the court directed the plaintiff to effect service of summons upon the defendant through a prominent notice in either the Daily Nation Newspaper or the Standard Newspaper. On 16/8/2022, John Kirori Ngaruiya - Advocate filed an affidavit of service exhibiting copy of a notice published in the Daily Nation Newspaper on 26/7/2022. Satisfied that service had been effected upon the defendant, the court allowed an ex parte hearing on 16/1/2023.
4. At the hearing, PW1, Peter Kungu Waitara, adopted his written statement dated 12/8/2021. He produced a bundle of 10 documents as exhibits. He prayed for the reliefs sought in the plaint.
5. The court directed the plaintiff to file written submissions. In compliance, written submissions were filed by the firm of JK Ngaruiya & Co Advocates, dated 10/2/2023. Counsel for the plaintiff submitted that the plaintiff had presented evidence to prove that the suit property belonged to the deceased and that the defendant caused the suit property to be fraudulently registered in her name. Counsel urged the court to grant the prayers sought in the plaint.
6. The court has considered the plaintiff's pleadings and evidence. The court has also considered the relevant legal frameworks and jurisprudence. The single question to be answered in this undefended cause is whether the plaintiff has proved his case on a balance of probabilities.
7. From the materials presented to the court, there is uncontroverted evidence that Njeri Waitara also known as Hanna Njeri Waitara [the deceased] held shares in Gatundu Nyakinyua Company. Secondly, there is evidence that Gatundu Nyakinyua Company, through their letter dated 4/11/2016, confirmed that land parcel Gatwanyaga/Ngoliba Block 1/1770 belonged to the deceased Njeri Waitara. Further, there is evidence that the deceased balloted for ballot card number 1770 denoting the suit property. On record, there is a green card extract showing that the defendant, Florence Wairimu Gatua, was issued with a title deed relating to the suit property on 5/7/2016. There is, however, no evidence on how the defendant got to be registered as proprietor of the suit property.
8. What are the consequences of a party failing to tender defence and evidence? The Court of Appeal in the case of *Edward Mariga through Stanley Mobisa Mariga v Nathaniel David Schulter & another* [1997] eKLR stated as follows:

“Where a defendant does not adduce evidence, the plaintiff's evidence is to be believed.”
9. In the absence of any defence or controverting evidence by the defendant, the court is satisfied that Peter Kungu Waitara, suing for and on behalf of the Estate of Hanna Njeri Waitara alias Njeri Waitara, has proved his case against the defendant on a balance of probabilities.
10. Consequently, the plaintiff is granted the following reliefs:
  - a. It is hereby declared that the late Njeri Waitara also known as Hanna Njeri Waitara is the owner of land parcel number Gatwanyaga/ Ngoliba Block 1/1770.
  - b. The defendant's title deed relating to the above parcel of land is hereby cancelled.
  - c. The Land Registrar is hereby ordered to register land parcel number Gatwanyaga/ Ngoliba Block 1/1770 in the name of the plaintiff as the administrator of the estate of the late Njeri Waitara also known as Hanna Njeri Waitara.
  - d. The defendant shall bear costs of this suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 13TH DAY OF MARCH 2023**



**B M EBOSO**

**JUDGE**

Ms Njoki for the Plaintiff

Court Assistant: Hinga

