



Njayio & another v Muhia and Waweru (Sued as Administrators of the Estate of Harrison Muhia -Waweru) & 2 others (Environment & Land Case 487 of 2017) [2025] KEELC 4131 (KLR) (22 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4131 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 487 OF 2017**

MD MWANGI, J

MAY 22, 2025

BETWEEN

LEPATEI OLE NJAYIO 1ST PLAINTIFF

LEMALON OLE KEREMAN (SUNG AS ADMINISTRATOR OF THE ESTATE OF KIDIRI OLE PARTIMA) 2ND PLAINTIFF

AND

GODFREY KARIUKI MUHIA AND JOHN WAWERU (SUED AS ADMINISTRATORS OF THE ESTATE OF HARRISSON MUHIA - WAWERU) 1ST DEFENDANT

REGISTRAR OF TITLES 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

RULING

Background

1. This case was initiated by way of a plaint dated 13th October 2016 filed in court on 21st October 2016. The Plaintiffs describe themselves as the administrators of the estate of Kadiri Ole Partima. Their case is that the late Kadiri Ole Partima was the owner of land Title No. Kimana/Tikondo/606 (hereinafter referred to as ‘the suit property’), having been issued with a title to the land on 1st September 1981. However, the 1st Defendant allegedly connived with the 2nd Defendant and fraudulently acquired the title to the suit property without the authority of the deceased owner. The Plaintiffs have listed the particulars of fraud at paragraph 8 of the Plaint.



2. The Plaintiffs allege that the illegal acquisition of the suit property and the continued stay by the 1st Defendant therein amounts to trespass. The Plaintiffs prayed for judgment against the Defendants, jointly and severally for;
 - a. Revocation of the title to the suit property issued by the 2nd Defendant on 11th July 1991 in favor of the 1st Defendant.
 - b. A declaration that the title issued on 11th July 1991 is null and void.
 - c. An eviction order against the 1st Defendant.
 - d. General damages for trespass and mesne profits.
 - e. Costs of the suit.
3. The plaint was filed alongside an undated witness statement of one Lepatei Ole Njayio, the 1st Plaintiff herein. In the statement, the 1st Plaintiff averred that the 1st Defendant colluded with the 2nd Defendant and acquired title for the 1.80 hectares which they purportedly hived off from the suit property.
4. It was the 1st Plaintiff's case that the deceased could not have sold the land because the original title was still in his possession at the time of his death. The same was never surrendered for any subdivision(s) to be effected. The 1st Defendant according to the 1st Plaintiff must have therefore obtained his title by way of fraudulent activities.
5. The 1st Plaintiff alleges that he only discovered the fraud in the year 2015 after conducting a search; that was when he learnt that the 1st Defendant had obtained the title in 1991.
6. In their list of documents, the Plaintiffs listed the following documents;
 - i. Limited grant of letters of administration.
 - ii. Land search receipt dated 26th February 2015.
 - iii. Land certificate for Kjd/Kimana/Tikondo/606 issued on 1st September 1981.
 - iv. Copies of national identity cards of Lepatei Oel Ntayio and Lemalon Oel Kereman.
 - v. Death certificate of Kadiri Ole Partima.
 - vi. Letter from the chief of Kimana Location confirming the Plaintiffs as the sons of the late Kadiri Ole Partima.
7. The plaint was subsequently amended on 14th November 2018 substituting the 1st Defendant with Godfrey Muhia and John Waweru, described as the sons and administrators of the estate of Harrison Muhia Waweru (deceased) implying that the 1st Defendant died after the filing of the suit necessitating his substitution with the administrators of his estate.

Response by the 2nd and 3rd Defendants.

8. The Hon. Attorney General entered appearance and filed a statement of defence on behalf of the 2nd and 3rd Defendants. In the said statement of defence, the 2nd and 3rd Defendants denied the allegations by the Plaintiffs putting them to strict proof. They particularly denied that the Plaintiffs or the late Kidiri Ole Partima was the rightful owner of the suit property. They denied the allegations of connivance putting the Plaintiffs to strict proof.



9. The administrators of the estate of Harrison Muhia Waweru, the 1st Defendant did not enter appearance; neither did they file a statement of defence.

Proceedings before the court.

10. From the court record, the case proceeded to hearing. The Plaintiffs called two witnesses; the 1st Plaintiff, who testified as PW1 and the Land Registrar who testified as PW2. The 2nd and 3rd Defendants did not present any witnesses.
11. Upon the close of the hearing, the matter was scheduled for judgment before my predecessor, Gicheru J. However, instead of a judgment, the learned judge issued directions on 14th May 2024, directing that;
- a. The 1st and 2nd Defendants to be served personally with the amended plaint, verifying affidavit, witness statements and documents and summons to enter appearance in the presence of the area chief or assistant chief. The name and mobile number of the chief to be given in the affidavit of service.
 - b. If practicable, such service to be photographed and the photographs to be filed together with the affidavit of service.
 - c. The case may thereafter proceed in the normal manner.
12. When counsel for the Plaintiffs, Mr. Kelvin Mogeni appeared before me on 11th March 2025, he sought a judgment date based on the evidence on record.
13. However, having carefully read the directions of the court issued on 14th day of May 2024, I do not think this matter is ripe for judgment. My predecessor was categorical that the 1st Defendant were not properly served with summons to enter appearance. That was the reason why he ordered personal service of the summons to enter appearance, upon noting the seriousness of the case against the 1st Defendant (the estate of Harrison Muhia Waweru).
14. The import of the directions by Gicheru J in not so many words rendered the proceedings in this matter a nullity; having commenced before the key party in the case was properly served with the summons. The matter must therefore start afresh; with pre-trial directions, as the learned Judge directed; “in the normal manner”. That is my interpretation of the directions of 14th May 2024.
15. I accordingly direct that this matter be set down for pre-trial directions forthwith.
- It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 22ND DAY OF MAY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Chacha for the Plaintiffs

N/A by the Defendants

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

