



**In re Estate of Paul Karanja Wanjihia - Deceased (Civil Appeal
E005 of 2024) [2025] KEHC 5641 (KLR) (Civ) (7 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5641 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CIVIL
CIVIL APPEAL E005 OF 2024**

KW KIARIE, J

MAY 7, 2025

IN THE ESTATE OF PAUL KARANJA WANJHIA-DECEASED

BETWEEN

GRACE WANJIRU KARANJA APPELLANT

AND

PETER NJOROGE KAGOTHO 1ST RESPONDENT

ELIJAH MUREGI KIGOTHO 2ND RESPONDENT

(Being an appeal from the ruling and order in Nyabururu Chief Magistrate's Succession Cause No. 303 of 2021 by Hon. Nyang'ara Osoro –Senior Resident Magistrate)

JUDGMENT

1. On the 22nd day of August 2024, Hon. Nyang'ara Osoro delivered a ruling in which he held that he lacked jurisdiction to determine the facts regarding land parcel number Nyandarua/Ol Kalou South/3958. He referred the parties to the Environment and Land Court. The appellant was aggrieved by the said ruling and filed this appeal. The firm of Njoki Mureithi & Company Advocates represented her. She raised the following grounds of appeal:
 - a. The learned trial magistrate erred in law and fact in upholding the Notice of Preliminary Objection dated 16th October, 2023, and subsequently dismissing the appellant's summons for rectification dated 23rd June 2023 in total disregard of clear and undisputed facts that the parcel of land No. Nyandarua/Olkalou South/3958 was unlawfully and illegally transferred when the registered owner was deceased and no succession proceedings relating to his estate were initiated.



- b. The learned trial magistrate erred in law and fact in holding that she had no jurisdiction to deal with a parcel of land No. Nyandarua/Olkalou South/3958, and that it should be placed before the Environment and Land Court.
 - c. The learned trial magistrate erred in law and fact in dismissing the summons for rectification dated 23rd June 2024 in its entirety without addressing the issue of shares with Safaricom Limited which the applicant sought to include in the list of properties owned by the deceased person and which she had erroneously left out during filing of the succession proceedings.
 - d. The learned trial magistrate erred in law and fact in paragraph 10 of the ruling that there was no evidence that the property belonged to the deceased. At the same time, the appellant had attached a copy of abstract of title/Green card dated 29/5/2023 as annexure marked “GWK 3” showing that the land belonged to the deceased and the same was transferred to the 1st respondent on 29th June 2021 who later transferred the same to the 2nd respondent on 20th September 2021 while the deceased had passed on 23rd March, 2021 and before succession proceedings were initiated.
 - e. The learned trial magistrate erred in law and fact by failing to appreciate that any property that was transferred after the demise of the deceased and before the succession proceedings were concluded and the estate effectively distributed by the court, all the transactions ought to be cancelled and the property reinstated back to the estate.
 - f. The learned trial magistrate erred in law, expressed total bias against the appellant, and disregarded her pleadings and the submissions filed on her behalf.
2. The 1st respondent opposed the appeal. He argued that this matter is under the ambit of the Environment and Land Court. He was represented by Mirugi Kariuki & Company Advocates.
 3. The 2nd respondent opposed the appeal. Like the first respondent, he argued that this matter is under the ambit of the Environment and Land Court. He was represented by Kariuki Mwangi & Company Advocates.
 4. This is the first appellate court. I recognize my duty to evaluate all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and watching their demeanour. I will be guided by the pronouncements in the case of *Selle v Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions on the matter.
 5. Paul Karanja Wanjihia died on the 23rd March 2021. Prior to his death, land parcel number Nyandarua/Olkalou South/3958 was registered on the 27th January 2020 in his name. On the 29th day of June 2021, the land was transferred to Peter Njoroge Kagotho, the first respondent. On the 30th day of September 2021, it was transferred to Elijah Muregi Kigotho, the second respondent.
 6. Section 45 of the [Law of Succession Act](#) prohibits intermeddling with the property of a deceased person. It states:
 1. Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession of or dispose of, or otherwise intermeddle with, any free property of a deceased person.
 2. Any person who contravenes the provisions of this section shall—



- a. be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
 - b. be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.
7. The first respondent did not have the legal authority to transfer the land to himself and subsequently to the second respondent. The transaction was fraught with illegality. The learned trial magistrate, therefore, erred in declaring that he lacked jurisdiction in the matter. There was no land dispute. In the case of *Santuzza Bilioti alias Mei Santuzza (Deceased) v Giancarlo Falasconi* [2014] eKLR, it was held:

“...the succession court has the power to order a title deed to revert to the names of a deceased person. This, in effect, amounts to the cancellation of the title deed. Further, a succession court can order a cancellation of a title deed if a deceased's property is being fraudulently taken away by non-beneficiaries, such as where the property is being sold before a grant is confirmed.
8. The ruling of the learned trial Magistrate is set aside and substituted with the following orders:
 - a. That parcel of land L.R. No. Nyandarua/Olkalou South/ 3958, forms part of the estate of the late Paul Karanja Wanjihia and as such, is included in probate and Administration forms number 5 as part of his estate.
 - b. That land reference No. Nyandarua/Olkalou South 3958 and its resultant titles revert to the deceased Paul Wanjihia Karanja for redistribution.
 - c. That any dealing transaction, subdivisions, possession, transfer, assignment or disposition of the deceased's property comprised in land parcel No. Nyandarua/Olkalou South 3958 was illegally subdivided into LR. No. Nyandarua/Olkalou south 4402 and Nyandarua/Olkalou south/4403, or any other subdivision without express authority of the law or by a grant of representation under the law of succession, is illegal, null and void.
 - d. Land titles concerning parcels L.R. No. Nyandarua/Olkalou South/4402 and Nyandarua/Olkalou South/4403, which arose from the unlawful and fraudulent subdivision of the original parcel of land L.R. Nyandarua/Olkalou South/3958, are revoked, and the same are to revert to the original parcel L.R. Nyandarua/Olkalou South /3958.
 - e. A fresh distribution mode for the deceased's estate should include specifically L.R. Nyandarua/Olkalou South/3958 and shares with Safaricom Limited.
9. The respondents will bear the cost of this appeal.

DELIVERED AND SIGNED AT NYANDARUA THIS 7TH DAY OF MAY 2025

KIARIE WAWERU KIARIE

JUDGE

