

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO. 239 OF 2018

ALEXANDER ANTHONY WAHIU.....1ST PLAINTIFF

SAMUEL MWAI.....2ND PLAINTIFF

NICHOLAS MUIRURI.....3RD PLAINTIFF

VERSUS

JOSEPH KARIHA WAHIU.....1ST DEFENDANT

THUMBI KAMAU.....2ND DEFENDANT

RULING

When the court retreated to write the judgement in this case, it noted that the Plaintiffs' claim related to the interest which their late mother, Eunice Wambui Kariha claimed in land reference number 209/13291 ("the Suit Property"). The court noted that the Suit Property in this case was the subject matter of Nairobi High Court Miscellaneous Civil Application Number 10 of 2006 based on the claim that the land was jointly acquired by the 1st Defendant and his late wife, Eunice Wambui Kariha. The court also noted that there was another dispute being Nairobi High Court Civil Suit Number 43 of 2010 (Originating Summons) between the 1st Defendant and his late wife over the Suit Property. The Plaintiffs are the children of the 1st Defendant and his late wife, Eunice Wambui Kariha.

Eunice Wambui Kariha died on 28/12/2014. It would appear that she died intestate. Since the claim by the late Eunice Wambui Kariha to the Suit Property survived her death, the claim to the land can be continued by her children, who are the Plaintiffs in this case after taking out letters of administration for her estate.

In this court's view, the proper procedure would be for the Plaintiffs to first have a determination made in Nairobi High Court Miscellaneous Civil Application Number 10 of 2006 and Nairobi High Court Civil Suit Number 43 of 2010 (OS) regarding the share over the Suit Property that the late Eunice Wambui Kariha was entitled to because her claim survived her death and she had children who would be the dependants of her estate. The Plaintiffs ought to substitute their late mother in those suits after obtaining letters of administration over her estate.

In the interest of justice, the court stays this suit until Nairobi HCCC No. 43 of 2010 (OS) and Nairobi High Court Miscellaneous Civil Application Number 10 of 2006 are heard and a determination is made by the Family Division of the High Court on the share the Plaintiff's late mother was entitled to in the Suit Property. That is the share which the beneficiaries of her estate can lay claim to.

The *status quo* prevailing as at the date of this ruling will be maintained by the parties so as to preserve the Suit Property until the court determines the share in the Suit Property which the Plaintiffs' late mother was entitled to.

DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF AUGUST 2021.

K. BOR

JUDGE

In the presence of: -

Mr. Stanley Kingara for the Plaintiffs

Ms. B. Bundi holding brief for Mr. M. Gitonga for the 2nd Defendant

Mr. V. Owuor- Court Assistant

No appearance for the 2nd Defendant