



Onguru v Magara & 2 others (Environmental and Land Originating Summons E006 of 2023) [2025] KEELC 7265 (KLR) (22 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7265 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E006 OF 2023**

**M SILA, J
OCTOBER 22, 2025**

BETWEEN

JOSEPH MOKUA ONGURU PLAINTIFF

AND

TERESIA MAGARA 1ST DEFENDANT

NYAMUSI MAGARA 2ND DEFENDANT

LAND REGISTRAR, KISII COUNTY 3RD DEFENDANT

RULING

1. This suit was commenced by an Originating Summons filed on 22 May 2023. The applicant contended that he has acquired title, by way of adverse possession, to the land parcel Wanjare/Bokeire/881 which at the time of filing suit was registered in name of Magara Nyagisera. She was dead at the time that the suit was filed. The suit was filed against Teresia Magara, Nyamusi Magara, and the Land Registrar, Kisii. Teresia and Nyamusi are said to be the wives of Magara Nyagisera (deceased). When the suit was filed neither Teresia nor Nyamusi held a grant of letters of administration in respect of the estate of Magara Nyagisera. A grant was subsequently obtained on 27 March 2024.
2. When the matter came up for mention before me on 16 July 2025, I directed the parties to file submissions on whether or not the suit is maintainable, given that at the time it was filed, neither Teresia nor Nyamusi were legal representatives of the estate of Magara Nyagisera. I have not seen any submissions filed by the applicant’s counsel.
3. It is not disputed that when the suit was filed, neither respondent were legal representatives of the estate of Magara Nyasigera. In the same way that a suit cannot be filed on behalf of a deceased person without the plaintiff holding a grant of letters of administration, so too a suit cannot be filed regarding the property of a deceased person against persons who are not legal representatives of the deceased. This goes to the root of the case and such suit if filed would be null and void ab initio.



4. Mutungi J, explained the matter aptly in the case of Mutwiwa & another v Mwatha (Being Sued as the Legal Representative of the Estate of Lawrence Mwatha Nyaga) & 2 others (Environment and Land Appeal E032 of 2024) [2025] KEELC 6512 (KLR) (1 October 2025) (Judgment) where he held as follows :

“It is my view that just like a person who is not an Administrator of a deceased estate cannot institute a suit on behalf of the estate, a Plaintiff or Applicant cannot institute a suit touching on the property of a deceased person against persons who have not been appointed administrators of the estate. That is what the Appellants did in the instant matter and for that reason, the Appellants suit was a nullity from inception. The suit was incompetent and not sustainable.”

5. I agree with the above dictum. Such suit is null and void ab initio and is not capable of being cured by a subsequent receipt of letters of administration.

6. This suit was filed in respect of property in name of a deceased person against persons who did not have letters of administration to be able to represent the estate of the deceased when the suit was commenced. It is null and void and incapable of being cured.

7. The last issue is costs. Maybe I would have exercised some leniency if the applicant was gracious enough to withdraw his suit when the issue was pointed out. But he did not, and he did not even bother to defend his position by filing submissions. In light of that, the respondents fully deserve the costs of this suit. Thus, this suit is hereby struck out with costs to the respondents.

8. Orders accordingly.

DATED AND DELIVERED THIS 22 DAY OF OCTOBER 2025

JUSTICE MUNYAO SILA.

JUDGE, ENVIRONMENT AND LAND COURT,

AT KISII.

Delivered in the presence of :

Ms. Nyandoro for the 1st and 2nd defendants

Mr. Ndiritu for the 3rd defendant

Mr. Obure for the plaintiff – Absent

Court Assistant – Michael Oyuko

