



Wanyaga & 2 others v Njoroge & 3 others (Environment and Land Case 108 of 2019) [2025] KEELC 7208 (KLR) (16 October 2025) (Judgment)

Neutral citation: [2025] KEELC 7208 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 108 OF 2019
LC KOMINGOI, J
OCTOBER 16, 2025**

BETWEEN

**NANCY WAIRIMU WANYAGA 1ST PLAINTIFF
DORCAS WANGUI WANJOHI 2ND PLAINTIFF
MIRIAM WANGUI NGANGA 3RD PLAINTIFF**

AND

**JAMES MBARIA NJOROGE 1ST DEFENDANT
PRISCILLAH WAMBUI NJOROGE 2ND DEFENDANT
CHIEF LAND REGISTRAR 3RD DEFENDANT
REGISTRAR OF TITLES 4TH DEFENDANT**

JUDGMENT

1. By way of a Complaint dated 13th December 2019, the Plaintiffs claim that parcel known as Ngong/Ngong/59728 measuring approximately 1.17 hectares was duly registered to one Mary Wanjumbi Njoroge [deceased]. Prior to her demise, she bequeathed the property to her daughters - Nancy Wairimu Wanyaga [the 1st Plaintiff], Dorcas Wangui Ndung'u [the 2nd Plaintiff], Sera Wanjiru Mwangi [deceased] and Priscillah Wambui Njoroge [the 2nd Defendant].
2. Sometime in August 2019, the Plaintiffs noticed people visiting the property. Upon visiting the Ngong land registry to investigate if there were any dealings on the same, they discovered that the said property had been subdivided by their brother, the 1st Defendant into parcels; Ngong/Ngong/90143 and 90144. It was further subdivided to Ngong/Ngong/92061, 92062, 92063, 92064, 92065, 92066 and 92067 and all parcels transferred to him, save for parcel Ngong/Ngong/92064 which was registered in the 2nd Defendant's name.



3. They claim that the subdivision was irregular and fraudulently undertaken because no Grant of Letters of Administration had been obtained prior to the subdivision and transfer of the suit property to any persons.
4. They therefore sought the following reliefs;
 - a. A declaration that the subdivision and the transfer of the suit property and any other subsequent dealing on the suit property to wit land Title Number Ngong/Ngong/59728 by the 1st Defendant and/or his agents is irregular, illegal, and/or fraudulent and thus null and void ab initio as the same does not meet the threshold as provided by the law.
 - b. An order of permanent Injunction restraining the 1st and 2nd Defendants, their agents, employees and/or servants from advertising, selling, transferring, disposing of and/or interfering in any other manner whatsoever with the parcel of lands to wit Title Numbers Ngong/Ngong/92061, Ngong/Ngong/92062, Ngong/Ngong/92063, Ngong/Ngong/92064, Ngong/Ngong/92065, Ngong/Ngong/92066, Ngong/Ngong/92067.
 - c. An order of mandatory Injunction directed to the 3rd and 4th Defendant to cancel land Title Numbers Ngong/Ngong/92061, Ngong/Ngong/92062, Ngong/Ngong/92063, Ngong/Ngong/92064, Ngong/Ngong/92065, Ngong/Ngong/92066, Ngong/Ngong/92067 and a rectification of the Title deed to the original Title Deed to wit Land Title No. Ngong/Ngong/59728.
 - d. Costs of this suit.
5. In the Statement of Defence dated 21st February 2020 indicated as the 1st and 2nd Defendants statement of Defence, they denied any allegation of fraud stating that if there were any transactions on the suit property, then the same were sanctioned by the owner prior to her demise and that the suit ought to be dismissed with costs to them.
6. However, from the Court record, the 2nd Defendant later filed an application to file her Statement of Defence out of time, and the application was allowed by consent of the parties. In the Statement of Defence and Cross claim dated 5th July 2024, the 2nd Defendant admitted the Plaintiffs claim but stated that she was not part of the fraudulent dealings but was only a transferee of the parcel of land in her name. As such, costs of the suit should be borne by the 1st Defendant.
7. In her Cross claim against the 1st Defendant, she stated that her late mother bequeathed the suit property to her four daughters as per her Will but also indicated that if they so wished, they could give the 1st Defendant a portion of the land because he had taken care of her. To actualise their mother's wishes, the 1st Defendant offered to assist them in the transaction and processing of new titles deeds in their names. They were to send him Kshs. 50,000 each for purposes of this transaction. The 2nd Defendant stated that she sent the said transaction fees and was given title for parcel Ngong/Ngong/92064 in her name. It is her case that, the rest of the sisters were not given their Title Deeds. It is upon follow up that they discovered the illegal subdivisions and allocation of six portions to the 1st defendant.
8. She therefore stated that she was not part of the fraudulent transaction and prayed for costs of the cross claim against the 1st Defendant.
9. The Plaintiffs in their response to the 1st Defendant's statement of defence stated that the 1st Defendant had admitted that their mother passed away in 2007 and it was not possible for a title deed to be issued in



her name in 2014 and transfers to be carried out in 2019 without undertaking succession proceedings. They maintained that, any transaction regarding the suit property was illegal, null and void.

10. The 1st Defendant in his response to the cross claim denied every allegation and asked that the cross claim be dismissed with costs.

Evidence of the Plaintiffs

11. PW1, Nancy Wairimu Wanyaga, the 1st Plaintiff, adopted her witness statement dated 15th December 2019 as her evidence in chief and produced her bundle of documents which was marked as P. Exhibit 1 to 6 respectively.
12. On cross examination, she stated that she was in court on behalf of her sisters although she did not have any written authority from them. She stated that the suit property belonged to their father and upon his demise it transmitted to their mother, who then bequeathed it to her and her three sisters, and other parcels of land bequeathed to their three brothers. It was her testimony that their brother declined to file succession proceedings in respect of their late mother's estate.
13. She stated that they gave their brother money for subdivision of the suit property but he sold it to other people.
14. On re-examination she stated that their mother showed them the particular parcel of land during her lifetime although the 1st Defendant registered the whole land in his name and never gave them their share.

Evidence of the Defendants

15. DW1, Priscilla Wambui Njoroge, the 2nd Defendant, adopted her witness statement dated 10th July 2024 and produced her bundle of documents as exhibits.
16. On cross-examination, DW1 stated that the 1st Defendant was her elder brother and confirmed that they were a family of three sisters and three brothers. She further stated that at the time of their mother's demise on 16th July 2007, the suit property remained registered in the name of their late father, and no succession proceedings had been instituted. According to her, she had never seen any title registered in her mother's name, although the 1st Defendant had stated otherwise.
17. DW1 further stated that her father's land measured approximately 12 acres. From this, he gave their mother 3 acres, which the mother subsequently bequeathed to DW1 and her three sisters. At the time of making the bequest, the mother directed that the daughters allocate the 1st Defendant a quarter of an acre in recognition of the care he had provided to her. DW1 further stated that she was entitled to three-quarters of an acre and that the 1st Defendant was entrusted with the responsibility of effecting the subdivision. She recalled that a surveyor visited the property for purposes of subdivision. However, she observed that, apart from a title issued in her name, all the other resultant titles were registered in the 1st Defendant's name.
18. On further cross-examination, DW1 stated that the 1st Plaintiff had sued her because although she remitted money for the subdivision, she did not eventually obtain a title deed in her name. She reiterated that it was the 1st Defendant who oversaw the subdivisions and the processing of titles since he held the original title to the suit property.
19. On re-examination, DW1 clarified that out of their father's twelve [12] acres, each of the three brothers received three [3] acres, while their mother was allocated three [3] acres. It was their mother's wish that her 3 acres be shared equally among the four daughters. She testified that the 1st Defendant, being



- the eldest son, had promised to assist the sisters in processing the subdivisions and titles, and they had trusted him to do so. It is her case, that he failed to allocate any portion to the sisters, and further noted that no succession proceedings had been undertaken in respect of their father's estate.
20. DW2, James Mbaria Njoroge, the 1st Defendant, who adopted his witness statement as his evidence-in-chief and produced his bundle of documents which was admitted and marked as D. Exhibits 1 to 5 respectively. It was his testimony that their late mother executed her Will voluntarily, in the presence of their elder brother Paul Ndung'u, as well as the area chief. He maintained that although the Plaintiffs had not instituted succession proceedings in respect of their mother's estate, they were present during the subdivision exercise and indeed provided the funds to facilitate the subdivision and transfer, which he duly effected in their favour.
 21. On cross - examination, DW2 testified that parcel Ngong/Ngong/718 measured approximately twelve [12] acres and that succession proceedings had been undertaken in respect of their late father's estate, although he had not filed the formal court documents to that effect. He stated that he, together with his brother Amos Ndung'u, acted as Administrators of their father's estate and that the twelve [12] acres had been subdivided into four equal portions of three acres each, allocated to the three brothers and their mother during the 1990s. He further testified that; parcel Ngong/Ngong/59728 was registered in their mother's name and that a title deed was issued in 2014 despite, her having passed away in 2007. It was his position that their mother's three-acre share was to be further subdivided among himself, his brother Amos and Paul, his sisters Priscilla, and Nancy, as well as his two sons, and that this subdivision was effected in 2014.
 22. DW2 confirmed that all the resultant subdivisions were registered in his name, save for parcel 92064 which was registered in the name of the 2nd Defendant. He stated that he later transferred the portions to his siblings. He admitted that no succession proceedings had been filed in respect of the estate of their late mother and further acknowledged that he had sold his own portion. When referred to the Will contained in the Plaintiffs' bundle, he confirmed that the document was drafted by the 2nd Defendant under instructions from their mother and that it provided for subdivision of the three acres between Nancy, Priscilla, and himself. He admitted that he was a witness to the Will and clarified that although it was different from an earlier Will, their mother had varied it to include the other beneficiaries. He further stated that his sisters, save for Priscilla, executed a document renouncing their entitlement to the land, which was subsequently lodged with the Public Trustee on 12th March 2020.
 23. He further stated that upon the demise of their mother, her property, parcel number 59728, passed to him by consensus of the family, and that formal succession proceedings were deemed unnecessary as they had all agreed on the sub-division. He also stated that at the time their mother executed her Will, the title to the suit property was not yet registered in her name.
 24. On re-examination, DW2 reiterated that the land was subdivided in accordance with their mother's Will and that each of his sisters obtained title to a portion of the property. He further testified that he had since sold his share of the land. He maintained that the Will was valid and legitimate as it had not been challenged by any party.
 25. At the close of the oral testimonies, the parties tendered their final written submissions.

Submissions of the Plaintiffs

26. Counsel for the Plaintiffs submitted that it was not in dispute that no succession process for the Estate of Mary Wanjumbi Njoroge [the mother] had been carried out and therefore no Administrator had ever been appointed. Therefore, the issues for determination were: Whether the suit property was



illegally and fraudulently subdivided and transferred by the 1st Defendant and whether the said transfer and subdivision should be cancelled.

27. On whether the suit property was illegally and fraudulently subdivided and transferred by the 1st Defendant, counsel submitted that since no succession proceedings had been taken out, any dealings with the suit property was an act of intermeddling contrary to Section 45 and 55 of the [Law of Succession Act](#). Therefore, the certificate of title emanating from such a transaction had been illegally and un-procedurally acquired with reference to *Zacharia Wambugu Gathimu & another v John Ndungu Maina* [2019] eKLR and *Grace Waruinu Ngigi & another vs Ngugi Nguri & 4 others* [2002] eKLR. As such, the court should declare those dealings illegal and cancel any titles, subdivisions or transfers emanating therefrom.

Submissions of the 1st Defendant

28. Counsel for the 1st Defendant submitted on the following issues as summarised below.
29. On whether the transfer and subdivision of LR No. Ngong / Ngong /718 was fraudulent, irregular, illegal or null and void ab initio, it was submitted that certificate of title was conclusive evidence of ownership unless there fraud or illegality which had not been proved citing *Vijay Morjaria v Nansingh Madhusingh Darbar & another* [2000] eKLR and *Koinange & 13 Others v Charles Karuga Koinange* [1986] KLR 23.
30. On whether the Plaintiffs had locus standi, it was argued that the Plaintiffs' attempt to invoke cancellation of title and rectification orders against the 1st Defendant in their personal capacity was an error because any challenge to the administration of Mary Wanjumbi Njoroge's estate should be done by duly appointed administrators. Reference was made to *Co-operative Bank of Kenya Ltd v Standard Chartered Bank* [2014] eKLR and *Julian Adoyo ongunga vs Francis Kiberenge Abano Migori* [2016] eKLR.
31. On whether the Plaintiffs were entitled to the reliefs sought, it was submitted that the Plaintiffs had not proved their case and the reliefs sought could therefore not be granted.
32. On whether the 1st Defendant was a trustee acting under family instruction and acquiescence, it was submitted that it was their late mother's directive to the 1st Defendant was the basis of his authority to subdivide the suit property which the sisters were aware of and even financed. Therefore, this acquiescence stopped them from later challenging the process, citing *Serah Njeri Mwobi v John Kimani Njoroge* [2013] eKLR.

Submissions of the 2nd Defendant

33. Counsel also submitted that the subdivision of their mother's property was illegal and unlawful because it was an act of intermeddling and any titles and/or registration emanating from those actions should be cancelled as espoused by Section 80 of the [Land Registration Act](#) and citing *Santuzza Bilioti alias Mei Santuzza [Deceased] v Giancarlo Falasconi* [2014] eKLR.

Analysis and Determination

34. I have considered the pleadings, the evidence on record, the written submissions and legal authorities cited. I find that the issues for determination are:
- i. Whether the Plaintiffs have proved that the subdivision and transfer of parcel Ngong/ Ngong/59728 was illegal and void ab initio



- ii. Whether the titles emanating from the subdivision of parcel Ngong/Ngong/59728 should be cancelled;
 - iii. Who should bear costs of the suit?
35. The Plaintiffs claim that parcel Ngong/Ngong/59728 registered in their mother's name was bequeathed to them by their late mother. However, the 1st defendant subdivided and transferred it without undertaking succession proceedings.
 36. The 1st defendant also confirmed that succession proceedings for the Estate of their late mother had not been undertaken although he caused the land to be subdivided and transferred to the beneficiaries.
 37. Section 45[1] *Law of Succession Act* provides that: ... no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person...
 38. In the instant suit, it is clear that while there is an alleged Will left behind by the late Mary Wanjumbi Njoroge, the same was questioned by the Plaintiffs. It was therefore necessary for the probate and administration process to be undertaken for purposes of authenticating the Will and confirming the Administrators.
 39. It is also on record that the title Ngong/Ngong/59728 was issued on 4th April 2014 in favour of Mary Wanjumbi Njoroge. It was stated in evidence that the said Mary Wanjumbi Njoroge passed away in the year 2007.
It is not clear how a title was processed in the name of a deceased person, several years after her demise.
 40. Can this be said to be an act of intermeddling? To define what intermeddling is, the Court of Appeal in *Kiragu & 2 others v Kiragu & 7 others* [Civil Appeal E471 of 2021] [2024] KECA 1600 [KLR] held:

“... What we deduce from the provisions of section 45 of the Act and from the aforementioned decision of the High Court is that intermeddling occurs where administrators or any person interested in the estate of a deceased person as a beneficiary or otherwise, deals with the said estate without any lawful authority and in a manner as to diminish such an estate...”
 41. It is not in dispute that the transactions involving the Estate of the late Mary Wanjumbi Njoroge were undertaken illegally. As such, given the Provisions of Section 80 of the *Land Registration Act*, the Court has power to direct that all subdivisions and transfers emanating from title; LR No. Ngong.Ngong/59728, be cancelled.
 42. Accordingly I make the following orders;
 - a. That the Land Registrar Ngong is hereby directed to cancel all sub-divisions and transfers emanating from LR No. Ngong/Ngong/59728 within sixty [60] days from the date of this Judgement.
 - b. That an order of permanent injunction is hereby issued against the Plaintiffs, the defendants and anyone claiming in their names from interfering with or using in any manner title Ngong/ Ngong/59728 and its subsequent subdivisions until Succession proceedings in respect of the Estate of the late Mary Wambui Njoroge are heard and determined.
 - c. This being a family matter, each party shall bear their own costs of the suit.



DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 16TH DAY OF OCTOBER 2025.

L. KOMINGOI

JUDGE.

In the presence of:

Mr. Marubu for the Plaintiffs.

Mr. Onduso for Mr. Chesoli for the 1st Defendant.

N/A for the 2nd Defendant.

N/A for the 3rd, 4th, Defendants.

Court Assistant – Peter.

