

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 394 of 2014

RAHAB NJERI GICHEHA &

PAULINE NGINA MWANGI.....

PLAINTIFFS

VERSUS

PETER KARIUKI NJOGU T/A

KUONA MBALI INVESTMENTS.....1ST

DEFENDANT

BENSON NJUKI KARIGI T/A

KUONA MBALI INVESTMENTS.....2ND

DEFENDANT

LAND REGISTRAR KAJIADO DISTRICT.....3RD

DEFENDANT

JUDGEMENT

1. By the **Plaint** dated **14th January, 2024** and **Amended** on **12th February 2020** the Plaintiffs instituted this suit

through a Power of Attorney donated by the Legal Representative and Administrator of the Estate of the Mwangi Gicho who was the legal owner of property Kajiado/Loodariak/608 measuring approximately 76 hectares.

2. In the year 2013, the Plaintiffs visited the Kajiado Lands Office and discovered that there were changes and alterations on the records of the property indicating that the 1st and 2nd defendants were the new owners. They claim that these changes were undertaken before the succession process was completed and the records do not reflect how the transfer to the defendants was undertaken. They also claimed that there was a caution on the land which was removed without any notice. It is the Plaintiffs' case that the alleged transfer of the suit property was irregular aimed at illegally depriving them of the property.

3. They sought the following reliefs;

a. The Defendants be ordered to re-transfer property Kajiado/Loodariak/608 to the original owner.

b. Cancellation of the new Title deed from the 1st and 2nd Defendants and revert it back to the original owner.

c. Cost of the suit.

d. Any other relief that the Court may deem fit in the circumstances.

4. The **1st and 2nd Defendants** in their Statement of Defence stated that they were the legal and bonafide owners of Land Parcel known as Kajiado/ Loodariak/608 having purchased it from Stephen Gicho Mwangi, the legal representative of the Estate of Mwangi Gichio (Deceased), through an agreement of sale dated the 1st December 2012 for a consideration of Kshs. 3, 600,000. The said Administrator Stephen Gicho was accompanied by other beneficiaries; Nelson Mwaura Mwangi, James Gicho Mwangi and David Munene Mwangi who consented to the said sale.

5. Upon execution of the agreement, a deposit of Kshs. 400,000 was paid in cash to the Vendors at the offices of their Advocates. An additional Kshs. 1,250,000 was paid on various dates to the Legal Representatives bank

account an amount which was duly acknowledged by the Vendors. It is also their case that on 3rd October 2013 they completed payment of the balance of the Purchase Price of Kshs. 1,950,000 and an acknowledgement done to that effect and duly executed.

6. They contested the suit on grounds that the Plaintiffs had come to Court with unclean hands having received the full purchase price.
7. The **3rd Defendant** in its defence denied the Plaintiff's allegations and claimed that if the title was transferred, subdivided or sold, then the same was done lawfully. That, any claim of illegality or fraud against the 3rd Defendant was false.

Evidence of the Plaintiff

8. **PW1, Pauline Ngina Mwangi**, a beneficiary of the Estate of her late father adopted her witness statement dated 30th December 2013 as her evidence in chief and produced her bundle of documents as exhibits.
9. **On cross examination** she stated that Stephen Gicho Mwangi was her brother, Bernard Wanyoike was her uncle. She confirmed that they were the Administrators. She

stated that as per the sale agreement dated 21st December 2012, the land was sold for Kshs. 3,600,000 by her brothers- Stephen Gicho Mwangi, James Gicho Mwangi, Nelson Gicho Mwangi and David Munene. She contested the sale indicating that she was a beneficiary of the Estate of her late father yet she was not aware of the sale. She also stated that had the seller conducted due diligence he would have discovered that there were more beneficiaries to the Estate and some had not consented to the sale.

10. **On re-examination** she stated that she did not consent to the sale and at the time the land was sold, the Grant of Letters of Administration had not been confirmed. She maintained that the sale ought to be cancelled and the land do revert to her late father's name.

11. **PW2 Rahab Njeri Gicheha** adopted her witness statement as her evidence in chief and also relied the bundle of documents earlier produced by PW1.

12. **On cross examination** she also confirmed that the land belonged to her father and it was sold by her four brothers without her consent and or information. She

stated that there were ten beneficiaries – six sons and four daughters. She pointed out that one of the Administrators of the Estate was Bernard Wanyoike who instituted the suit, but passed on during the pendency of the suit. He did not participate in the sale of the suit property.

Evidence of the Defendants

13. **DW1 Benson Njuki Karigi**, the 2nd Defendant adopted his witness statement dated 19th February 2025 as his evidence in chief and produced his bundle of documents as exhibits. He stated that he learnt from an agent of the sale of the suit property and met the four brothers. They informed him that they were selling the suit property to get money to undertake succession proceedings and they settled on a purchase price of Kshs. 3,600,000. The agreement was then reduced into writing as dated 21st December 2012 and it was signed by the four brothers. He paid the purchase price and was issued with a title deed to the suit property. He was therefore not party to any illegality and sought that the suit be dismissed.

14. **On cross examination** he stated that he was shown original documents relating to the suit property and he was informed that succession proceedings were ongoing. He was shown the list of beneficiaries and the brothers informed him that they would give their sisters part of the money. He also indicated that as per the list, Stephen Gicho was the Administrator and all the four brothers signed the sale agreement. He then issued them with his documents and a transfer was duly executed in his favour. It was his testimony that he had no information about a confirmation of Grant and neither did he see a Certificate of Confirmation of Grant.
15. **On re-examination** he stated that the four brothers informed him that the sisters were aware of the sale and that his possession of the suit property would not be hindered.
16. At the close of the oral testimonies, parties tendered their final written submissions.

Submissions of the Plaintiffs

17. On whether the agreement for sale over Kajiado/Loodariak/608 and the transfer was regular, it was

submitted that the alleged sale was undertaken by people who did not have *locus standi* because Grant of Letters of Administration for the Estate of the late Mwangi Gicho had not been issued since the succession proceedings had not been completed. Therefore, the sale was void ab initio and dealing with a deceased's property before administration was illegal. Reference was made to **In Estate of M'Ajogi M'ikiugu (Deceased) [2017] eKLR** where the Court held that: *under Section 82(b) (ii) of the Law of Succession Act, sale of immovable property of the estate before confirmation of grant is prohibited. Again, under Section 55 of the Law of Succession Act, the law has placed restriction on distribution of any capital assets of the estate before confirmation of grant. Therefore, no person shall have any power or legal authority or capacity to sell immovable property of the deceased before confirmation of grant. As such, any such attempted sale of immovable property of the estate before confirmation of grant shall be null and void for all purposes and intents.*

18. It was also argued that even if the proceedings had been completed, all dependants and beneficiaries should

have been involved in disposing the property as per **Section 35 of the Law of Succession Act** and that the property ought to have been distributed equally among all dependants regardless of gender as per **Section 38 of the Law of Succession Act**. Therefore, since the vendors were not Administrators of the Estate the sale was a nullity and every action founded on it was bad and incurable in law as held in **Macfoy v United Africa Co. Ltd [1961] 3 All ER 1169.**

19. On whether the order to re-transfer and rectify the register can be sustained, it was submitted that rectification of the register was allowed where evidence of fraud or any illegality was proved. Since the sale and transfer of the suit property was anchored on a nullity, then the Court should direct the 3rd Defendant to cancel and rectify the title issued in that regard.

Submissions of the 1st and 2nd Defendants

20. On whether the Agreement for sale between the parties herein was valid, it was submitted that the Defendants purchased the suit property from some of the beneficiaries of the Estate of the deceased and the

allegation that the Plaintiffs were unaware was false. It was pointed out that Grant of Letters of administration in the Estate of the Deceased were issued to Stephen Gicho Mwangi and Bernard Wanyoike Gico on 20th September 2011 through Githunguri Succession Cause No. 80 of 2009. Therefore, the sale was valid having been purchased from the Administrators. Therefore, the Plaintiffs should not be allowed to claim illegality of a sale they were aware of as stated in their witness statement. As such, there was conclusive evidence of a valid sale citing **In re Estate of Johana Nyaga (Deceased) 120181 eKLR** and **In re Estate of Murira Kariedcha (Deceased) [20187 eKLR]**.

21. On whether title Kajiado/Loodariak/608 should be revoked, it was submitted that the defendants were the legal owners of the suit property having purchased it from the legal Administrators of the Estate of the deceased for valuable consideration. The Plaintiffs had not evidenced any fraud or illegality against the defendants to warrant the revocation. It was argued that the Plaintiffs had not

adduced any evidence that a complaint was filed with the Land Registrar of the illegality or to any other authority.

22. The defendants therefore held good title and the suit should be dismissed with costs to them.

Analysis and Determination

23. I have considered the pleadings, the evidence on record, the written submissions, and the authorities cited. I find that the issues for determination are:

- i. Whether there is a proper suit before court.***
- ii. Whether the suit Kajiado/Loodarikak/608 was legally sold and transferred to the 1st and 2nd Defendants;***
- iii. Whether the Plaintiffs have proved their case and if so are they entitled to the prayers sought in the Amended Plaint?.***
- iv. What orders should issue.***
- v. Who should bear costs of the suit?***

24. It is not in dispute that the Grant of Letters of Administration in the estate of the late Mwangi Gicho (Deceased) were granted to Stephen Gicho Mwangi and Benard Wanyoike Gico. However on the 14th January 2024 Benard Wanyoike Gico file the suit in his own name. The Co-Administrator Stephen Gicho Mwangi is not named as the plaintiff in this suit. This is fatal to this suit as administrators must work together as a unit. One cannot undertake a step in the administration and or distribution of the estate without the other.

25. It means that the suit as filed in 2014 was fatally defective. In the plaint, the plaintiff does not state that there is a Co-Administrator or that he has authority from the said Co-Administrator to file this suit.

26. It appears at some point he donated a special Power of Attorney to Rahab Njeri Gicheha and Pauline Ngina Mwangi who were substituted as the plaintiffs.

27. It appears after Benard Wanyoike Gico passed on, Rahab Njeri Gicheha and Pauline Ngina Mwangi were substituted as the plaintiff's being the Administrators of the estate as per the Grant issued on 30th June 2023.

28. I have gone through the said Grant. There are three Administrators Rahab Njeri Gicheha, Pauline Ngina Mwang and Stephen Mwangi Gicho. Again the said Stephen Mwangi Gicho is not named as the Plaintiff. His exclusion as the Plaintiff means this suit is also fatally defective and cannot stand.

In the case of **Republic Vs. Nairobi City Council; Luziki Holdings Limited & 2 others (Interested Parties) Exparte Christine Wangari Gachege** suing on behalf of the **Estate of Rahab Wanjiru Evans** Majanja J observed thus;

“The capacity to agitate any suit on behalf of the estate of the Deceased inheres in the Administrators duly appointed by the court (See section 79 of the Law of Succession Act (Chapter 160 of the Laws of Kenya). They act jointly at all times and in the event of a dispute among them, as is apparent on this case, the dispute must be resolved by the court that issued Grant of Letters of Administration. One Administrator out of the others lacks the capacity to bind the estate or any

of the administrators or file suit alone on behalf of the estate.

In the circumstances, this suit is incompetent, it cannot be sustained. I warn myself that striking out a suit is a drastic remedy but where there is no capacity of the parties, the axe must fall.”

29. Similarly, in the case of **Michael Chole Lugalía (suing as administrator of the estate of Ezekiel Majani Lugalía) Vs. Jonathan Ligure Ayodi (2016)** eKLR Obaga J stated thus;

“On the second point, Section 82 of the Law of succession Act Cap 160 Laws of Kenya provides as follows:-

“Personal representative shall, subject only to any limitation imposed by their grant, have the following powers:- (a) to enforce by suit or otherwise, all causes of action which by virtue of any law, survive the deceased or arise out of his death for his estate”

It is not contested that the Plaintiff is one of the administrators of the estate of the

deceased. The grant of letters of administration in respect of the deceased were granted on 31/7/2008 to the Plaintiff and 3 others. The Plaintiff cannot therefore seek to bring a suit to enforce rights due to the estate of the deceased without involving the other administrators. I was referred to a decision by Justice Gitumbi in Milimani ELC No. 207 of 2013 Simon Kamau Muhindi (Suing as the administrator of the estate of Esther Nyokabi Muhindi - vs Monica Wambui Ngugi & another. In this case there were two administrators who had been appointed to represent the estate of the late Esther Nyokabi Muhindi. One of the administrators brought a suit on behalf of the estate without naming the other co-administrator or seeking his consent. A preliminary objection was raised on among other grounds that the Plaintiff had no capacity to bring a suit without the authority or inclusion of his co-administrator. The judge

upheld the preliminary objection and quoted Justice Majanja's decision in Misc Civil Application No 103”b” of 2013 Republic -vs- Nairobi City council where the Judge stated as follows:-

“The capacity to agitate any suit on behalf of the estate of the deceased inheres in the administrators duly appointed by the court. They act jointly at all times One administrator out of the others lacks the capacity to bind the estate or any of the administrators or file suit alone on behalf of the estate”

Based on the decision above herein to which I entirely agree, I find that the Plaintiff herein had no capacity to bring a suit on behalf of the estate of the deceased. He left out the other co-administrators and this cannot be taken to be a mere procedural technicality which can be cured by Article 159 of the constitution”.

30. I am guided by the above authority in finding that the suit herein is incompetent and the same cannot stand.
31. Having stated so I need not determine the merits of the other issues.
32. The Plaintiffs suit is hereby dismissed with no orders as to costs.

**Dated, Signed and Delivered virtually at Kajiado
this 27th day of November 2025.**

L. KOMINGOI

JUDGE.

IN THE PRESENCE OF:

Mr. Wanyoike for the Plaintiffs.

Ms. Kabinu for the 1st, 2nd Defendants.

N/A for the 3rd Defendant.

Court Assistant - Peter.