

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA**

**ELC NO E011 OF 2025**

**TERESIA WAMBUI KESI.....1<sup>ST</sup> PLAINTOFF**

**GLADYS MUTHONI MUNG'URA.....2<sup>ND</sup>**

**PLAINTIFF**

**VERSUS**

**JOSEPHINE NDIKO MUNG'URA.....1<sup>ST</sup>**

**DEFENDANT**

**JOHN NGURO KIBUNJA.....2<sup>ND</sup>**

**DEFENDANT**

**RULING**

Before me is an Application dated 2/5/2025 where the Defendant seeks that this suit be dismissed or struck out with costs to the Defendant. The same is brought under Order 2 Rule 15 (1), (b), (c) and (d) of the Civil Procedure Rules and Sections 1A,1B,3A 6 and 7 of the Civil Procedure Act. The Application supported by the Affidavit of Josephine Ndiko Mung'ura sworn on even date and the grounds outlined on the face of the Application.

The Orders are sought on the ground that this suit is res judicata for it has been fully litigated upon and Judgment pronounced between the same parties in Nyahururu C.M Succession case No.

32 of 2018 and Nyahururu High Court Succession Civil Appeal No. 2 of 2020 over the same subject matter.

The suit therefore violates Sections 6 and 7 of the Civil Procedure Act and is scandalous, frivolous, vexatious and an abuse of the process of this Court.

The Application further states that this suit may prejudice, embarrass, delay or compromise the fair conclusion or resolution of the dispute between the parties, is incorrectly defective in Law and that it is in the interest of justice that the Plaintiffs are estopped from presenting or instituting other cases based on the subject matter. The 1<sup>st</sup> Defendant, Josephine Ndiko Mung'ura in an Affidavit sworn on even date depones that the parties are the same and the same subject matter in all the suits aforementioned.

In the Affidavit in Reply by the 2<sup>nd</sup> Plaintiff, Gladys Muthoni Mung'ura sworn on 15/5/2025 it is deponed that the Defendant's Application is weak, inept, misconceived, misleading and an abuse of the process of the Court with the remotest chances of success.

She depones that the cause of action in the suit herein is not a succession issue but a matter relating to protecting the family home and the entire homestead which has been maliciously left in the hands of the 2<sup>nd</sup> Applicant who in the 2<sup>nd</sup> Plaintiff's words has no heart, concern or intention of taking care of the same but only to have shelter and enjoy his life as a result of which she and her co-Plaintiff and the other family members have been denied

access to the family home now fully occupied by the 2<sup>nd</sup> Defendant.

The 2<sup>nd</sup> Defendant is an employee of the 1<sup>st</sup> Defendant and by disallowing the Plaintiff access to the property the family home is in a dilapidated condition and the graveyard of the Plaintiffs' parents abandoned and is being submerged by the bundles of tall grass. She further contends that in the succession cause there was no issue of employment of the 2<sup>nd</sup> Defendant since he is not an heir of the Estate or beneficiary of their father's Estate. That the proceedings in this suit are tortious unlike the Succession issues in the earlier suit. The issue in this suit is for the determination that 0.15 Hectares represents a portion for the family homestead which is supposed to be separated from the current reflection of the 1<sup>st</sup> Defendant's share of a portion measuring 0.661 Hectares and the separation of the 0.15 Hectares arises directly from the administration of the Estate of their father and that this Court has powers and jurisdiction to adjudicate on the matters as provided for under Order 37 Rule 1 (g) of the Civil Procedure Rules.

In Succession cause No. 32 of 2018 the sole Asset belonging to the Estate of the late Solomon Mung'ura Mathia was part of Land L.R No. NYANDARUA/WANJOHI/342 measuring 3.4 Hectares. The same according to the Affidavit in support of the summons for confirmation of Grant proposed and drawn by the firm of Waichungo Martin & Co. Advocates on 23/1/2019 and filed in Court on even date was to be shared as follows:-

- a. Teresiah Wambui Kesi – 1.36 Acres.
- b. Joseph Kariuki Mung'ura – 1.36 Acres.
- c. Peninah Mugure Mung'ura – 1.36 Acres.
- d. Josephine Ndiko Mung'ura – 1.36 Acres.
- e. Gladys Muthoni Mung'ura – 1.36 Acres.
- f. Kelvin Mburu Wanjohi – 1.36 Acres.
- g. Teresiah Wambui Kesi &  
Gladys Muthoni Mung'ura – 0.24 Acres.

The parties were unable to agree on the mode of distribution and the Court delegated the mandate to do so to the County Surveyor who was to file in Court the current Surveyor's Report confirming the sub-division of NYANDARUA/ WANJOHI/342 into six (6) parts as per the letter of consent dated 21/7/2015. This was in respect to where each party would be positioned failure to which the Court would proceed to cast lots.

All the aforesaid beneficiaries save the 4<sup>th</sup> beneficiary seem to have been dissatisfied with this distribution on the ground that the learned Magistrate erred in law and in fact by awarding Josephine Ndiko Mung'ura Mathia (Deceased) a bigger share of the Estate of Solomon Mung'ura Mathia (Deceased) as against the others by giving her 0.54 Hectares and awarding the area of 0.115 Hectares holding the Deceased homestead and graveyard and in failing to allow the Appellants access to the portion set aside for homestead and graveyard and allocating the same to the Respondent, Josephine Ndiko Mung'ura. The Appellants therefore prayed that the Estate be redistributed equally among the 6 beneficiaries with

the area holding the Deceased's home and graveyard being held in trust for all the beneficiaries by the Administrators.

On 6/10/2022 the Appellate Court returned the matter to the lower Court for determination which distributed the Estate of the Deceased as follows: -

1. The Report took cognizance of the presence of all family members while the survey report was being performed.
2. The family members were able to identify Portion F(0.546ha) as belonging to Kelvin Mburu (son to the late Antony Wanjohi Mung'ura). The said portion was uncontested and was developed. It had a timber house, connected to electricity and grace(sic) for the parents.
3. Portion A was pointed out to the surveyors as belonging to Josphine Ndiko Mung'ura. However, there was dissatisfaction among other family members claiming that the said parcel of land was bigger than the rest (0.661ha) while others are 0.546 Hectares. It was also captured in the Report that the parcel of land contained the family home as well as the parents' graves.
4. Portions B-E were disputed as to who owns what portion. All these portions remain uncultivated but are under crop and animal grazing.
5. Portion A (0.661ha) despite the dispute regarding its size, the said portion shall be in possession of Josephine Ndiko Mung'ura. This allocation is justified due to the presence of

the family home and parents' graves which hold a considerable sentimental value. The slightly larger value is offset by the fact that this portion serves as the family's ancestral home.

6. Portion B(0.546HA) shall be allocated to Gladys Muthoni. This share shall be considered an equal share.
7. Portion C (0.546HA) shall be allocated to Teresiah Wambui Kesi. This share shall be considered an equal share.
8. Portion D (0.546 HA) shall be allocated to Joseph Kariuki Mung'ura. This share shall be considered an equal share.
9. Portion E (0.546 Ha) shall be allocated to Peninah Mugure Mung'ura. This share shall be considered an equal share.

And the Land Registrar, Nyandarua County was directed by the Court to implement the mode of distribution ordered by the Court effecting the necessary sub-divisions and issuing Title Deeds to the respective beneficiaries as per the distribution directed. This was on 7/11/2024.

The Judgment of James H.S Wayanga, S.R.M of 18/6/2020 dissatisfied Teresiah Wambui Kesi and Gladys Muthoni Mung'ura who appealed against Josephine Ndiko Mung'ura in High Court Succession Appeal No. 2 of 2020 on the ground that the Witnesses who signed the Deceased's will were not competent and their competence was not challenged at all, failure to call Kennedy Mugane and John Nguro rendered them incompetent to attest to the Deceased's signature on the will dated 24/11/2024, that the Court erred in failing to find that the Deceased died intestate and

failing to distribute his Estate according to his written will dated 24/11/2024.

1. That the learned Trial Magistrate erred in Law and in fact in finding that the Deceased had subdivided his estate into 6 portions as per the consent letter dated 21/7/20015 which consent was disputed.
2. That the Learned Trial Magistrate erred in law and in fact in calling for a surveyor's report with an intent of distributing the Estate of the Deceased as per the Consent letter dated 21/7/2015.
3. That the Learned Trial Magistrate erred in law and in fact by failing to take cognizance of the circumstances under which the objector took over the area of the homestead and the family graveyard and as a result, he rewarded an intermeddler by approving her unlawful actions.
4. That the Learned Trial Magistrate erred in law and in fact in finding that if the surveyor's Report was not conclusive, a ballot was to be cast to allocate the Estate to the beneficiaries as per the letter of Consent dated 21/7/2015.
5. That the Learned Trial Magistrate erred in law and in fact in failing to equitably distribute the deceased's Estate amongst the 6 beneficiaries and to allocate the area holding the homestead and family graveyard to the 6 beneficiaries jointly as per the Deceased's will.
6. That the Learned Trial Magistrate erred in law and in fact in failing to equitably distribute the Deceased's Estate amongst

the 6 beneficiaries and to allocate the area holding the homestead and family graveyard to the 6 beneficiaries jointly as would have been equitable.

Having given the steps taken in the prior suits including the Appeals therefrom it is clear that what the bone of contention in the suit therein can be summarized as distribution of L.R NYANDARUA/WANJOHI/ 342 belonging to the Estate of Solomon Mung'ura Mathia (Deceased).

In Nyandarua ELC case No. E011 OF 2025 between Teresiah Wambui Kesi and Gladys Muthui Mung'ura against Josephine Ndiko Mung'ura and John Nguro Kihinga, the Plaintiffs pray for the following Orders: -

- i. A permanent injunction restraining the 1st Defendant by herself, her Agents, Servants, representatives, employees, assigns and any other person claiming under her from claiming sole ownership of the family homestead which covers an area measuring **0.115 Ha.** of all that Parcel of land **known as No. Nyandarua/Wanjohi/342**, from forcefully occupying the homestead, employing and deploying or putting workers, caretakers, gardeners or any other person in the homestead including the 2nd Defendant herein and be ordered to abstain from interfering or dealing with the homestead in any manner.
- ii. A permanent injunction restraining the 2nd Defendant from occupying, staying, accessing, working on as gardener or caretaker, using the family house and other things or items

associated with the homestead which is standing on parcel No. Nyandarua/Wanjohi/342 digging or cultivating on the land and from keeping and/or rearing domestic animals on the parcel of land and a further order compelling the 2nd Defendant to vacate and give vacant possession.

- iii. A declaration that the Decision by the 1st Defendant to employ and deploy the 2nd Defendant to be the caretaker, employee or gardener of the homestead on a portion of land measuring 0.115 Hectares of all that Parcel of land known as Nyandarua/ Wanjohi/342 was made without consent and authority from the Plaintiffs who are the legal Administrators of the Estate of their deceased father **Solomon Mung'ura Mathia** who left behind the said homestead to the Plaintiffs, the 1st Defendant and other siblings is illegal, unenforceable, null and void.
- iv. An order compelling the 1st Defendant to reinstate the demolished structures and in particular the main gate to its original position and/or location to allow easy access to the homestead.
- v. Costs of the suit.
- vi. Any other or further relief that the Court deems fit and just to grant.

in a suit by way of Plaint dated 7/4/2025 and filed in Court on 9/4/2025.

Finally, in Nyahururu ELC (OS) No. E007 of 2024 which is now Nyandarua ELC (OS) No. E004 of 2025, the Applicants, Teresiah Wambui Kesi, Gladys Muthui Mung'ura and Penninah Mung'ura filed the suit by way of an Originating Summons on 26/11/2024 against Josephine Ndiko Mung'ura for the following orders:-

1. A Declaration that the Plaintiffs and the Defendants are all heirs to Estate of Solomon Mung'ura Mathia (Deceased).
2. A declaration that the deceased and the said Solomon Mung'ura Mathia left behind all that parcel of land known as NYANDARUA/ WANJOHI/342 as part of his Estate which Estate has undergone the process of Succession Cause No. E32 of 2018 and distribution has been done whereof the Plaintiffs and the Defendant have benefitted from the distribution in which each one of them is required to inherit a portion measuring 0.546 hectares as an equitable distribution.
3. A declaration be made that the portion which has been inherited by the Defendant is over and above the equitable distribution of each heir whereof the Defendant is occupying a portion measuring 0.661 Hectares instead of 0.546 hectares of which the Defendant has forcibly claimed a portion measuring 0.15 Hectares which is the area on which the family house is standing and where the graves of the parents are located which therefore makes the portion she inherited not to be equal as that inherited by the Plaintiffs which is supposed to be 0.546 hectares but has inherited 0.661 Hectares which includes the place which is supposed to be

turned into a wreath-laying yard for commemoration of the dead parents as a ceremony home.

4. An Order that the County Land Surveyor was ordered and directed to conduct a proper survey and do separate the said portion measuring 0.15 hectares and leave the Defendant with a portion measuring 0.546 hectares which is similar measurements or acreage as for the other heirs and have the said portion measuring 0.15 hectares be identified, marked, preserved and documented as a wreath-laying yard for commemoration of the dead parents and as a ceremony home.
5. An Order that the said portion measuring 0.15 hectares be registered in the joint names of the Plaintiffs, the Defendant herein and Kelvin Mburu and a separate Title Deed or any such document recognizing and confirming ownership be issued to that respect.
6. That there be no order as to costs.

In all these cases, the following are common features: -

- i. Josephine Ndiko Mung'ura being the usual victim.
- ii. Homestead and graveyard is the common issue in dispute.
- iii. The distribution of the Estate of the late Solomon Mung'ura Mathia.

The parties are the same though in some of the latter suits others are Plaintiff and/or Applicants but Josephine Ndiko Mung'ura has all along been the Defendant and/or Respondent.

But most important, the issue for determination is the distribution of the Deceased's (Solomon Mung'ura Mathia's) parcel of land L.R No. NYANDARUA/WANJOHI/342 measuring 3.4 Hectares among his beneficiaries viz: -

- a. Teresiah Wambui Kesi                      1.36 Acres
- b. Joseph Kariuki Mung'ura                      1.36 Acres
- c. Peninah Mugure Mung'ura                      1. 36 Acres
- d. Josephine Ndiko Mung'ura                      1.36 Acres
- e. Gladys Muthoni Mung'ura                      1.36 Acres
- f. Kelvin Mburu Wanjohi                      1.36 Acres
- g. Teresia Wambui Kesi & Gladys Muthoni Mung'ura - 0.24 Acres  
to hold in trust for themselves and of Joseph Kariuki Mung'ura,  
Peninah Mugure Mung'ura, Josephine Ndiko Mung'ura & Kelvin  
Mburu Wanjohi as family graveyard.

Needless to say, besides the issue of *res judicata*, this is a succession cause which should not have been given access to this Court.

The Applicants or some of them and/or with others not parties in these 2 suits having been dissatisfied in Succession Cause No. 32 of 2018 in the Chief Magistrate's Court in Nyahururu did appeal to the High Court twice and it has not been brought to the attention of this Court what the outcome of the latter Appeal i.e. Nyahururu High Court Civil Appeal No. 7 of 2024 is. And if not concluded, the parties herein should await its outcome and if

not satisfied they still have an opportunity for a second Appeal to the Court of Appeal.

Having said so, it is my singular duty to dismiss both suits viz. Nyandarua ELC Civil suit No. E011 of 2025 and Nyandarua ELC (OS) No. E004 of 2025 formerly Nyahururu ELC (OS) No. E007 of 2024.

I award the costs of the same to the Defendants and/or Respondents herein and I hope the Plaintiffs/Applicants herein will be advised and adhere to wise Counsel that at this rate they stand a chance of being declared vexatious litigants which record only a few Kenyans have been successful to attain.

**Ruling Read and Delivered in Nyandarua this 18th Day of December 2025.**

**MUGO KAMAU**

**JUDGE**

**In the Presence of: -**

**Court Assistant: Samson.**

**Mr. Omwancha for the Plaintiff.**

**Mr. Kaburu for the Defendant.**