

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NYERI
ELCA CASE NO.48 OF 2021

ZACHARY MAINA MUNYUA APPELLANT

VERSUS

NANCY WAMUYU MUNYUA 1ST RESPONDENT

TERESIA WAKANYI MUGO 2ND RESPONDENT

BEATRICE WAIRIMU MUNYUA 3RD RESPONDENT

CATHERINE WANJIRU MUNYUA 4TH RESPONDENT

DAMARIS WANJIKU MUNYUA 5TH RESPONDENT

JUDGMENT

1. This is an Appeal arising from the judgment of the Honorable A. Mwangi, SPM delivered on 12th November 2021 in Karatina, SPM ELC Case No. 25 of 2018.
2. By an Amended Complaint dated 10th May 2019, Zachary Maina Munyua (the Appellant) sought judgment against the five (5) Respondents for:

- a) Earnings from sale of tea leaves for the years 2013/2014 to 2017/2018 totalling Kshs 246,910/=;**
- b) General damages accruing due to intimidation, humiliation, cruel, inhuman and degrading treatment meted on the Plaintiff by the 1st and 2nd Defendants from 22nd January, 2013 to date;**
- c) Cancellation of all the fraudulent and illegal title deeds issued for land parcel LR No. Magutu/Gathehu/178 from 1962 to-date and orders for the subdivision of the same into five equal and economically viable portions for the Plaintiff and the 1st, 2nd, 3rd and 4th Defendants;**
- d) Cancellation of all the fraudulent and illegal title deeds issued for land parcel LR No. Magutu/Gathehu/179 issued to the 1st Defendant restoring it to its proper status within the Estate of the Late Francis Maina Kibata, restriction of the 1st Defendant from entering/operating on that property forthwith until a succession process of that Estate is instituted, determined and its distribution to the bona fide beneficiaries effected by this Honourable Court; and**

e) Cost of this suit and any other orders the Court may deem just and fit to grant.

3. The basis of those prayers was the Appellant's contention that LR No. Magutu/Gathehu/178 belonged to his late father Munyua Kibata who passed away in the year 1962. It was the Appellant's case that on 2nd August 2012, he lodged a restriction against the subdivisions of the said parcel of land. It was his case that on 2nd January 2013, he was accosted on the said parcel of land by someone purporting to be a Land Surveyor accompanied by hired workmen and five Administration Police Officers who informed him their mission was to subdivide the land and that the restriction earlier lodged was removed.
4. The Appellant asserted that thereafter a barbed wire fence was erected separating land parcel No. 1264 from 1285. It was his case that on 31st January 2013, he conducted an official search which revealed that LR. No Magutu/Gathehu/178 was registered in the name of his mother Damaris Wanjiku

Munyua on 28th November 2012 before it was subsequently sub-divided into five portions being parcel Nos 1283 to 1287.

5. The Appellant contended that the subdivisions were done without the consent of the bonafide proprietors. It was further his case that the 1st Respondent had authorized people to damage his tea bushes and had exposed his tomato fruits to uncontrollable pilferage thereby occasioning him a big loss. He further asserted that the 2nd Respondent did not possess a good title to land parcel No. Magutu/Gathehu/1283.
6. Nancy Wamuyu Munyua (the 1st Respondent) was opposed to the suit. In her Statement of Defence dated 25th November 2013, the 1st Respondent asserted that LR No. Magutu/Gathehu/178 was closed upon subdivision and that land parcel No. Magutu/Gathehu/1287 was transferred to her by her mother just like the other children. The 1st Respondent denied cutting down tea bushes and stated that she had only pruned the same as the standard in tea farming practice. The 1st Respondent asserted that the Appellant should tend to his tea on parcel No. 1284 which had been reserved for him and denied that the Plaintiff had suffered any loss.

7. The 2nd to 5th Defendants did not enter appearance or file any Statement of Defence in the matter.
8. Having heard the parties and by the judgment delivered on 12th November 2021, the Learned Trial Magistrate dismissed the suit upon making a finding that the Appellant had no capacity to file the suit as he did not have a grant of letters of administration to the estate of Munyua Kibata and Maina Kibata.
9. Aggrieved by the said determination the Appellant who was the Plaintiff in the lower court moved to this court vide a Memorandum of Appeal dated 22nd November 2021 and filed herein on 29th November 2021 urging this court to set aside the judgment on some five (5) grounds listed as follows:

1) The Magistrate misdirected herself by introducing and determining a completely new case which was absolutely alien to the Plaintiff's case and prayers;

2) The Magistrate erred by totally ignoring/ disregarding the testimony of PW2 and PW4 while treating that of PW1 as wholly inconsequential, evidence which was central to the proper case of the Plaintiff;

3) The Magistrate erred by materially misrepresenting the case of the Plaintiff so as to advance her fictional case;

4) The Magistrate erred through a peculiar favourable bias, unquestioningly accepting the evidence of the Defendant while significantly ignoring the incontrovertible evidence produced by the Plaintiff discrediting the Defence evidence in toto; and

5) The purported Judgment has no relationship to the case filed by the Plaintiff, infringes on his fundamental constitutional rights, violates the law and is a miscarriage of justice.

10. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a trial court, unlike the appellate court, had the advantage of observing the demeanour of the witnesses and hearing their evidence first hand. In ***Selle & Another -vs- Associated Motor Boat Co. Ltd & Others (1968) EA 123***, this Principle was enunciated thus:

“..... this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.....”

11. In the matter before me, the Appellant had at the trial court accused the Respondents of perpetrating fraud and illegality while dealing with two parcels of land, namely, LR Nos. Magutu/Gathehu/178 and 179. In relation to parcel No. 178, the Appellant asserted that the land had been registered in the name of his father the late Munyua Kibata who passed away in 1962 and that on 2nd August 2012, he had lodged a restriction thereon.
12. It was his case that later in the year 2013, he conducted an official search only to realise that the parcel of land had been transferred to the name of his mother Damaris Wanjiku Munyua (the 5th Defendant) before being sub-divided into five

(5) portions. The Appellant asserted that the sub-division had been done without the consent of the bonafide proprietors of the land. The Appellant further asserted that as a result of the sub-division, he had suffered a big loss as his tea bushes and tomatoes had been damaged.

13. In respect of LR No. Magutu/Gathehu/179, the Appellant contended that the same originally belonged to his uncle one Maina Kibata who before his death in 1968, had allowed the Appellant's family to utilize the land.
14. The 1st Respondent who is the only one who opposed the suit denied the Appellant's claim. She told the court that following the sub-division, parcel No. 1287 was passed to herself while the 5th Respondent retained parcel No. 1284 in trust for the Appellant.
15. Having heard the dispute, the Learned Trial Magistrate concluded as follows at Page 4 of her judgement:

“From the above summary of the evidence, the Plaintiff bases his cause of action on the allegation that the defendants fraudulently transferred to themselves LR No. Magutu/Gathehu/178 and 179 without filing (a) succession cause. The proprietors

of the two parcels of land were their father and uncle respectively. He admitted that he had not taken any letters of administration during cross-examination by counsel for the 1st Defendant. This admission unfortunately adversely affects their capacity to file this suit. This is as per the holding in *Athuman Juma Mwakuandika -vs- Martha Wangui Muriithi & another [2019]* eKLR where the court held as follows:

“It is trite law that the estate of a deceased person can only be represented in any legal proceedings by a person who is duly authorized to do so on behalf of the estate. Only a person who had been issued (with a) grant of letters of administration has capacity to represent the estate of a deceased person.. In light of the foregoing, and in view of the fact that the Plaintiff has admitted that the suit land belonged to his deceased father and considering that the Plaintiff has not taken out letters of administration, it is my finding that the Plaintiff in as far as he claims through his deceased father lacked the requisite locus standi to institute the suit and the same is incompetent, null and void.”

Without grant of letters of administration for the estates of Munyua Kibata and Maina Kibata, the plaintiff had no capacity to file this suit hence the same is incompetent, null and void. I therefore dismiss the suit with costs to the defendants.”

16. From the material placed before the court, there was no dispute that the previous owners of the parcels of land whose subdivision and subsequent registration the Appellant was challenging had long passed away. In his Plaint as amended, the Appellant had sought the cancellation of all title deeds issued for LR No. Magutu/Gathehu/178 from 1962 when his father Munyua Kibata died on account that they had been done fraudulently and illegally without any succession proceedings having been conducted. He urged the court to cancel the titles and order for the subdivision of the same into what he termed five equal and economically viable options to be registered in his name and that of the 1st to 4th Defendants.
17. That was the same position the Appellant took in regard to LR No. Magutu/Gathehu/179. According to the Appellant, the said

parcel of land had previously belonged to his uncle Francis Maina Kibata who had passed away in 1968. He urged the court to cancel the title deed issued to the 1st Defendant and to restore it to its proper status within the Estate of the Late Francis Maina Kibata and to restrict the 1st Defendant from using the same until a succession process for the estate was instituted and determined.

18. That being the case, one could not fault the Learned Trial Magistrate for reminding the Appellant that he ought to have at first clothed himself with the proper standing to enable him to institute the suit that he had brought before the court. By the court telling him that he had no *locus standi* to institute the suit, the court was simply letting the Appellant know that he could not be heard, even on whether or not he has a case worth listening to.

19. As the Court of Appeal stated in ***Troustik Union International & Another -vs- Jane Mbeyu & Another (1993) eKLR:***

“To determine who may agitate by suit any cause of action vested in him at the time of his death,

one must turn to Section 82 (a) of the Law of Succession Act. That Section confers that power on personal representatives and on them alone. As to who are personal representatives within the contemplation of the Act, Section 3, the interpretative Section, provides an all-inclusive answer. It says “personal representative means executor or administrator of a deceased person”.

20. In the matter herein, the Appellant clearly had no *locus standi* to institute the suit in the Lower Court seeking for the suit properties to be reverted to the estates of his father and that of his uncle. He was not acting as their personal representatives as he had not obtained any Grant of Letters of Administration.

21. Considering such a matter in ***Rajesh Pranjivan Chudasama -vs- Sailesh Prajivan Chudasama (2014)*** the Court of Appeal held thus:

“....in our view the position in law as regards... *locus standi* in succession matters is well settled. A litigant is clothed with *locus standi* upon obtaining a limited or a full grant of letters of administration in cases of intestate succession. In the case of

Otieno -vs- Ongo (supra) this court differently constituted rendered itself thus:

“....an administrator is not entitled to bring any action as administrator before he has taken out letters of administration. If he does, the action is incompetent as of the date of inception.”

22. In the matter herein, the Appellant was asking the court to make orders in respect of the two estates pending the institution of succession proceedings. He was not at the point of inception of the suit an administrator of either of the estates and his action was clearly incompetent as pointed out by the Learned Trial Magistrate.

23. In the premises, I did not find any merit in this Appeal. The same is dismissed with costs to the 1st Respondents.

Judgment dated, signed and delivered in open court and virtually at Mombasa this 18th day of December, 2025

.....
J.O. OLOLA
JUDGE

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Mr. Zachary Maina Munyua the Appellant in Person

- c) Mr. Kamwenji Advocate for the 1st Respondent
- d) No appearance for the 2nd Respondent
- e) No appearance for the 4th Respondent
- f) No appearance for the 5th Respondent

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