

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ELC CASE NO. E016 OF 2021

DANIEL GITAU KURIA 1ST PLAINTIFF/ RESPONDENT
SMART CITY DEVELOPERS
(K) LIMITED 2ND
PLAINTIFF/RESPONDENT
JOHN NGUGI KURIA 3RD PLAINTIFF/RESPONDENT

VERSUS

TERESIA WANJIKU WAINAINA.....1ST DEFENDANT/4TH RESPONDENT
PETER NYANGA KAIRU (Sued as the legal representative of
Jane Njambi Kairu alias Jane Njambi alias Njambi
Kairu (Deceased)2ND
DEFENDANT/APPLICANT
LAND REGISTRAR, RUIRU 3RD
DEFENDANT/RESPONDENT
ATTORNEY GENERAL OF KENYA 4TH DEFENDANT/RESPONDENT

RULING

1. Before me for determination is the 2nd Defendant/Applicant's application brought by way of Chamber Summons dated 16th May 2025 pursuant to Sections 1A, 1B and 3A of the Civil Procedure Act and Order 1 Rule 9 of the Civil Procedure Rules, 2010 seeking orders that the 2nd/Defendant / Applicant be struck out from this suit.
2. The application in premised on the grounds set out on the face of the Chamber Summons which are amplified in the Applicant's supporting affidavit sworn on 16th May 2025.

3. The gist of the application is that the 2nd Defendant is wrongly sued as the Administrator of the estate of Jane Njambi Kairu (deceased) pursuant to a Grant of Letters of Administration issued in Milimani Succession Cause No. 921 of 2011 on 18th August 2015 and confirmed on 6th March 2017. The 1st Defendant applied for revocation of the said grant on 24th November 2017. The said application for revocation of Grant was compromised through a mediation settlement agreement which was adopted as an order of the court on 15th October 2019. It is the Applicant's contention that his role as an administrator of the said estate was extinguished after the adoption of the said consent.
4. He denies having dealt with the title to the suit property and maintains that he has been improperly joined to the suit. He adds that the duplicity of ownership of land parcels number RUIRU/RUIRU EAST BLOCK 2 /4834 and RUIRU/RUIRU EAST BLOCK 2/4835 (suit property) between Lucy Wanjiku Karanja and Jane Njambi Kairu should be addressed by Nyakinyua Investments Limited.
5. The application was opposed by the 1st Plaintiff and the 1st Defendant. In his Replying affidavit Daniel Gitau Kuria, the 1st Plaintiff termed the application an abuse of the court process. He averred that in her Defence and bundle of documents, the 1st Defendant alleges that Jane Njambi Kairu (Deceased) who was her mother-in-law is the registered proprietor of the suit property. She further avers that it is not in dispute that the 2nd Defendant is the

administrator of the estate of Jane Njambi Kairu(deceased) hence he is a necessary party to the suit.

6. He adds that according to the Certificate of Confirmation of Grant which he terms as suspicious the suit property was to devolve to Samuel Wainaina (husband to the the 1st Defendant) who is also deceased . That in the circumstances, the 1st Defendant who is a co-administrator of the estate of Samuel Wainaina and the 2nd defendant who is the administrator of the estate of Jane Njambi Kairu are necessary and relevant parties to the suit.
7. In her Replying affidavit, Teresia Wanjiku Wainaina, the 1st Defendant depones that the Grant issued to the 2nd Defendant has become inoperative by operation of the law after the same was confirmed and the estate (of Jane Njambi Kairu) was distributed.
8. It is her contention that as per the mediation agreement, the suit property was admitted to be part of the estate of Samuel Wainaina (deceased) and as such she is better placed to represent the estate of Samuel Wainaina. She denies that the 2nd Defendant has ever represented the estate of Samuel Wainaina. She is of the view that since the suit property has changed hands and moved from the estate of Jane Njambi Kairu, the current owners should litigate on their own behalf.
9. The application was canvassed through written submissions and the Applicant, 1st and 2nd Defendants filed their submissions which I have read and carefully considered.

ANALYSIS AND DETERMINATION

10. The main issues for determination are whether the applicant has locus standi to be sued and whether the 2nd Defendant /Applicant should be struck out from this suit.
11. The 2nd Defendant has been sued in his capacity as the administrator of the estate of Jane Njambi Kairu (deceased) who is alleged to have been registered as the proprietor of land parcel number RUIRU/RUIRU EAST BLOCK 2/4835. The 1st Defendant who is a daughter -in -law of Jane Njambi Kairu (deceased) applied for revocation of the Grant issued to the 2nd Defendant, and on 24th July 2019 the parties recorded a consent to the effect that the application for revocation of Grant would be withdrawn on condition that the family of the late Samuel Wainaina, Jane Njambi's son, represented by the 1st Defendant, was recognized as the sole beneficiary of the suit property. The 1st Defendant was then required to avail the title to the suit property in her custody to the administrator to facilitate the completion of the succession cause.
12. It has been submitted that the 2nd Defendant was discharged from his role as administrator once the estate of the deceased which included the suit property once the estate was distributed and therefore, he lacks locus standi.
13. On the other hand, the Plaintiff has submitted that the Applicant has failed to fulfill his statutory obligations as he has admitted that he has never seen the original title or dealt with the suit property

hence he cannot claim to have completed the administration of the estate.

14. Section 83 of the Law of Succession Act Cap 160 of the Laws of Kenya sets out the duties of an administrator as follows:

- a) *To provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;*
- b) *To get in all the free property of the deceased including debts owing to him and moneys payable to his personal representatives by reason of his death;*
- c) *To pay out of the estate of the deceased, all expenses of obtaining their grant of representation (including estate duty, if any.)*
- d) *To ascertain and pay out of the estate of the deceased, all his debts;*
- e) *Within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith upto the date of the account.*
- f) *Subject to section 55, to distribute or to retain on trust as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom according to the respective beneficial interests therein under the will or intestacy, as the case may be;*
- g) *Within six months from the date of confirmation of grant or such longer period as the court may allow, to*

complete the administration of the estate in respect of all matters other than continuing trusts and to produce to the court the full and accurate account of the completed administration;

h) To produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.

i) To complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.

15. In the case of **Jebungei & 4 Others v Serem & 2 Others (Probate and Administration Case No. 9 of 2012) [2024] KEHC 1303 (KLR)** the court held as follows:

“The administrators have several duties prescribed by law, the most relevant being the completion of the administration of the estate as per the provisions of section 83 of the Law of Succession Act..... The administrators’ duty to complete the administration is inclusive of execution of documents necessary to conclude the administration”

16. In the instant case, no material has been placed before the court to demonstrate that the 2nd Defendant has completed the administration of the estate of Jane Njambi Kairu and therefore, he cannot claim that he lacks the locus standi to be sued.

17. I will now proceed to determine whether the Applicant should be struck out from the suit. In order to determine whether the Applicant should be struck out from the suit, it is important to determine whether he is a necessary party.
18. In the case of **Pizza Harvest Limited v Felix Midigo (2013) eKLR**, the court cited the case of **Amon v Raphael Tuck & Sons Limited (1956) All ER 273** where it was held as follows:

“What makes a person a necessary party? It is not of course merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance and is afraid that the existing parties may not advance them adequately. ..the court might often think it convenient or desirable that some of such persons be heard so that the court could be sure that it had found the complete answer, but no one would suggest that it would be necessary to hear them for that purpose. The only reason which makes it necessary to make a person a necessary party to an action is so that he should be bound by the result of the action, and the question to be settled, therefore must be a question in the action which cannot be effectually and completely settled unless he is a party.”

19. The definition of a necessary party is further illustrated by Havelock J in **Elisheba Muthoni Mbae v Nicholas Karani Gichoe & 2 Others (2014) eKLR** where the learned judge cited the case of **Werrot & Co Ltd & Others v Andrew Douglas Gregory &**

Others Nairobi HCCC No. 2363 of 1998 (unreported) In this case, Ringera J observed as follows:

“The guiding principle in deciding whether to add a party is whether that party is necessary in order to enable the court to effectually and completely adjudicate upon all the questions involved in the suit.

As stated in Sarkar’s Law of Civil Procedure, Vol 1 at Page 531-532, there are two tests in the application of this principle:

- i. He must be a necessary party*
- ii. He must be a proper party*
- iii. In the case of a defendant, there must be a relief flowing from that defendant to the plaintiff*
- iv. The ultimate order or decree cannot be enforced without his presence in the matter*
- v. His presence is necessary to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit.”*

20. I have perused the Amended plaint and the Plaintiffs have pleaded that the 1st and 2nd Defendants unlawfully demolished their site house and carted away the fencing poles while claiming ownership of the suit property. The Plaintiffs will need to prove these claims against the defendants.

21. Among the reliefs sought by the plaintiffs are a permanent injunction restraining the 1st and 2nd Defendants and anybody claiming under Jane Njambi Kairu (deceased) from trespassing,

entering, constructing or interfering with land parcels number RUIRU/RUIRU EAST BLOCK 2/4835 or its resultant sub- plots being RUIRU/RUIRU EAST BLOCK 2/14361, 14362, 14363, 14364, 14365, 14367, 14368, 14369 and 14370.

22. The Plaintiffs have also sought that any title, share certificate or ballot purporting to be in the name of Jane Njambi (deceased and held by the 1st and 2nd defendants in respect of land parcel number RUIRU/RUIRU EAST BLOCK 2/4835 be declared null and void and that the same be cancelled.
23. The 1st Defendant has made it clear that she is the person best placed to represent the estate of Samuel Wainaina in matters of the land that was confirmed by the court to belong to him. On his part, the 2nd Defendant has denied that he has handled the titles or dealt with the suit property. However, to the extent that there are reliefs sought by the plaintiffs against the 2nd Defendant and in order to effectively adjudicate upon and settle all the questions touching on the ownership and transfer of suit property, it would be premature to strike out the 2nd defendant from the suit.
24. For the foregoing reasons, the application is dismissed.
25. The costs of the application shall abide the outcome of the suit.

Dated, signed and delivered virtually this 22nd day of January 2026.

J. M ONYANGO
JUDGE

In the presence of:

1. Mr Manthi for Mr Mwitii for the 2nd Defendant/ Applicant
2. Mr Motari for the 3rd and 4th Defendant

Court Assistant: Hinga

ORIGINAL