

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA**  
**ELCC No. 97 OF 2021**

**JOSEPHINE KWAMBOKA GEKARA .....**  
**PLAINTIFF**

**VERSUS**

**HENRY BOSIRE GEKARA .....**  
**1<sup>ST</sup> DEFENDANT**

**BENJAMIN MOKUA GEKARA .....**  
**2<sup>ND</sup> DEFENDANT**

**JOSEPH OKERO GEKARA .....**  
**3<sup>RD</sup> DEFENDANT**

**OTAO GEKARA .....**  
**4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. Litigation in these consolidated matters commenced on 16<sup>th</sup> October 2012 in the High Court at Kisii when David Arita Gekara (Suing as the legal representative of Monicah Sigara Gekara (deceased)) filed Kisii HCCC No. 377 of 2012 against Nahashon Gekara Okero and Josephine Kwamboka Gekara. The suit, which was commenced through Plaint dated 15<sup>th</sup> October 2012, was later transferred to ELC at Kisii thereby becoming Kisii ELCC No. 1143 of 2016.
2. It was averred in the Plaint that Monicah Sigara Gekara purchased the parcel of land known as Ekerubo/36 measuring

46.6 acres (suit property) from the Settlement Fund Trustees in 1968 and paid the purchase price through earnings from pyrethrum farming. That the suit property was registered in the name of Nahashon Gekara Okero to hold in trust for Monicah Sigara Gekara and her children and that the Defendants in the case had sold part of the suit property.

3. The Plaintiff therefore sought judgment against the Defendants jointly and severally for:

*(a) A declaration that the 1<sup>st</sup> Defendant is holding the whole of land parcel Ekerubo/36 for the estate of the late Monica Sigara Gekara and her children and he is not entitled to sale or transfer any part thereof to the 2<sup>nd</sup> Defendant herein.*

*(b) Costs of the suit.*

*(c) Any other relief this Honourable court may deem fit and just to grant.*

4. The Defendants in Kisii HCCC No. 377 of 2012 filed Statement of Defence and Counterclaim dated 18<sup>th</sup> December 2012 through which they denied the Plaintiff's averments and stated that Monicah Sigara Gekara was the wife of Nahashon Gekara Okero and was entitled to a share of the suit property just like Josephine Kwamboka Gekara who was also his wife. Nahashon Gekara Okero further averred that he filed Miscellaneous

Application No. 34 of 2011 at Keroka seeking to sub-divide the suit property but Monicah Sigara Gekara objected.

5. The Defendants urged the Court to allow peaceful sub-division of the family land. They prayed for the following orders:

*1. The Plaintiff's suit be dismissed with costs and an order that the family land be sub-divided according to the Abagusii customs.*

*2. Costs and interest of the suit.*

6. On 11<sup>th</sup> February 2015, Josephine Kwamboka Gekara filed Kisii ELCC No. 58 of 2015 against Henry Bosire Gekara, Benjamin Mokuu Gekara, Joseph Okero Gekara and Otao Gekara. The suit was commenced through Plaint dated 11<sup>th</sup> February 2015.

7. Josephine Kwamboka Gekara averred in the Plaint that the Defendants in the case were her stepsons and sons to Nahashon Gekara Okero. She also averred that she was the second wife of Nahashon Gekara Okero and that she was the registered owner of the parcel of land known as Ekerubo Settlement Scheme/188 which parcel was given to her by Nahashon Gekara Okero while the Defendants were entitled to Ekerubo Settlement Scheme/189 which was equally given to them by Nahashon Gekara Okero.

8. Josephine Kwamboka Gekara further averred that since the year 2013, the Defendants had trespassed onto parcel number Ekerubo Settlement Scheme/188 by building temporary

houses and cultivating it. She therefore prayed for judgment against the Defendants jointly and severally for:

- a) A declaration that the suitland (sic) herein belongs to the Plaintiff exclusively and absolutely and that the Defendants' activities thereon amount to acts of trespass.*
- b) An order of eviction of the Defendants from the suitland (sic).*
- c) An order of permanent injunction restraining the Defendants jointly and severally from trespassing onto and/or in any manner whatsoever interfering with the suitland (sic).*
- d) General damages for trespass.*
- e) Costs of the suit and interest.*
- f) Further or other relief deemed just.*

9. The Defendants in Kisii ELCC No. 58 of 2015 filed Statement of Defence dated 24<sup>th</sup> March 2015 in which they averred that subdivision of Ekerubo Settlement Scheme/36 and creation of Ekerubo Settlement Scheme/187 to 189 was fraudulent, null and void. They further averred that they had been on the land since birth and that the subdivisions existed only on paper but could not extinguish their rights since they had developed the land and established homes on it. They therefore prayed that the suit be dismissed.

10. On 12<sup>th</sup> February 2015, the day after Kisii ELCC No. 58 of 2015 was filed, Nahashon Gekara Okero filed Kisii ELCC No. 59 of 2015 against Henry Bosire Gekara, Benjamin Mokuu Gekara, Joseph Okero Gekara and Daudi Ombachi Gekara through a Plaint dated 11<sup>th</sup> February 2015. He averred in the Plaint that he was the registered proprietor of the parcel of land known as Ekerubo Settlement Scheme/187 and that the Defendants were entitled to parcel number Ekerubo Settlement Scheme/189. That since the year 2013, the Defendants trespassed into parcel number Ekerubo Settlement Scheme/187 by erecting temporary houses and cultivating it.

11. Nahashon Gekara Okero therefore sought judgment against the Defendants for:

- a) A declaration that the suitland (sic) herein belongs to the Plaintiff exclusively and absolutely and that the Defendants' activities thereon amount to acts of trespass.*
- b) An order of eviction for the eviction of the Defendants from the suitland (sic).*
- c) An order of permanent injunction restraining the Defendants jointly and severally from trespassing onto and/or in any manner whatsoever interfering with the suitland (sic).*
- d) General damages for trespass.*
- e) Costs of the suit and interest.*

*f) Further or other relief deemed just.*

12. The Defendants in Kisii ELCC No. 59 of 2015 filed Statement of Defence dated 24<sup>th</sup> March 2015 in which they averred that subdivision of Ekerubo Settlement Scheme/36 and creation of Ekerubo Settlement Scheme/187 to 189 was fraudulent, null and void. They further averred that they had been on the land since birth and that the subdivisions existed only on paper but could not extinguish their rights since they had developed the land and established homes on it. They therefore prayed that the suit be dismissed.
13. David Arita Gekara filed Notice of Motion dated 15<sup>th</sup> October 2015, in Kisii HCCC No. 377 of 2012, seeking consolidation of the three matters. Following adoption of a consent comprised in a letter dated 16<sup>th</sup> October 2015, written on the letterhead of Asati & Co. Advocates, the three matters were consolidated. The parties did not however specify which of the files would be the lead file.
14. The matters thereafter proceeded to hearing. On 21<sup>st</sup> January 2020, David Arita Gekara testified as PW1. He stated that Monicah Sigara Gekara (deceased) was his mother, that Nahashon Gekara Okero was his father while Josephine Kwamboka Gekara was his stepmother. That as of the date of his testimony, Josephine Kwamboka Gekara had died. He further testified that parcel number Ekerubo Settlement Scheme/36 was purchased through family contributions from

proceeds of farming and petty businesses. That the contributors were PW1, Nahashon Gekara Okero, Josephine Bosibori Gekara, Joyce Nyamoita Gekara, Mary Osiri Gekara, Henry Bosire Gekara, Joseph Okero Gekara, Benjamin Mokuu Gekara, Alex Otao Gekara, Daudi Ombachi Gekara, Joel Gekara, Jemimah Gekara and Monicah Sigara Gekara (deceased).

15. PW1 further testified that the payments were made to Ekerubo Farmers Co-operative Society from 1968 to 1981 when a loan from the said society was cleared. That the family settled on the property in 1972 and continued growing pyrethrum and maize.

16. He added that Josephine Kwamboka Gekara got married to his father in 1975 and settled on parcel number W. Mugirango Ikoba/560 and that by then, Monicah Sigara Gekara (deceased) and her children were already in occupation of parcel number Ekerubo Settlement Scheme/36. That Josephine Kwamboka Gekara went to live on Ekerubo Settlement Scheme/36 in 1986, by which time PW1 and the rest had finished repaying the loan and that she never contributed to the purchase price.

17. PW1 went on to testify that his father brought Josephine Kwamboka Gekara to Ekerubo Settlement Scheme/36 under the pretext that she would be there for a short time and that as a result, there was friction between his parents. That his mother had 12 children each of whom was entitled to about 4

acres of Ekerubo Settlement Scheme/36 while his father was entitled to 5 acres. That when his father attempted to subdivide the land, they lodged a caution because he did not involve them. That his father then filed Keroka Misc. Application No. 34 of 2011 through which he obtained security to enable him to subdivide the land.

18. He added that as of the date of his testimony, his unmarried sister by the name Jemimah, he and his seven siblings were in occupation of about 10 acres of Ekerubo Settlement Scheme/36, that 10 acres of the parcel was rocky and unsuitable for occupation, while 8 acres remained unoccupied due to a dispute with the co-operative society. He also stated that Josephine Kwamboka Gekara was not entitled to any portion of the parcel save the 5 acres that his father was entitled to. He added that as of the date of his testimony, his father was the registered owner of Ekerubo Settlement Scheme/36 but held it in trust for the family.

19. PW1 went to testify that he was born in 1958 and that he was 10 years old by the time his father acquired the land. That his father was the only one who was a shareholder of the society and that all receipts were issued in his name. He added that his father subdivided the land into three portions, but he could not tell in whose name the titles were. He further stated that his mother died in the year 2011 while Josephine Kwamboka Gekara died in the year 2018. He added that the signature in

the mutation form for subdivision of Ekerubo Settlement Scheme/36 was his father's.

20. Subsequently on 5<sup>th</sup> November 2020, Henry Bosire Gekara testified as PW2. He stated that Nahashon Gekara Okero was his father while Josephine Kwamboka Gekara was his stepmother. That his late mother Monica Sigana Gekara purchased Ekerubo Settlement Scheme/36 from the Settlement Fund Trustees in 1968 and paid for it together with his father. That his father had two wives and that his late mother was the first wife.

21. PW2 further stated that after the loan in respect of the property had been repaid in full in the year 1983, his father moved Josephine Kwamboka Gekara to the suit property then a dispute ensued between his mother, father and the children. That his father then obtained the title in respect of the property and started demanding that PW2 and his brothers vacate. He added that he was staying in the property together with his six brothers as of the date of his testimony.

22. PW2 further testified that his father subdivided the land into three portions, but he was aware that his mother never signed the mutation forms and had doubts whether his father signed the mutation forms. That Ekerubo Settlement Scheme/36 measured about 46 acres out of which he was occupying about 3 acres, his brothers were occupying about 2.5 acres each, Josephine Kwamboka Gekara was occupying about 8 to 10

acres while his step brother was occupying about 2.5 acres. He also stated that they had sued their father because he had threatened to evict them.

23. He further stated that his father was the registered owner of Ekerubo Settlement Scheme/36 and that the said property was purchased in 1968 when he was aged 3 years. That Josephine Kwamboka Gekara got married to his father in 1975, that his father established for her a home in their ancestral land known as West Mugirango/lkoba/560 and that she never contributed to the purchase of Ekerubo Settlement Scheme/36 although she was already married to his father when it was purchased. He further stated that his mother died in the year 2010 while Josephine Kwamboka Gekara died in the year 2017.

24. The Plaintiff's case was thereafter closed.

25. Defence hearing proceeded on 30<sup>th</sup> November 2020, with Nahashon Gekara Okere testifying as DW1. He adopted his witness statement dated 11<sup>th</sup> February 2015 and produced copies of the documents listed in his list of documents dated 11<sup>th</sup> February 2015 as his exhibits. He stated that Henry Bosire Gekara, Benjamin Mokuwa Gekara, Joseph Okero Gekara and Daudi Ombachi Gekara were his sons borne by Monicah Sigara Gekara who was his first wife and that his other wife was Josephine Kwamboka Gekara. That both his wives were dead as of the date of his testimony.

26.DW1 further stated that he was the owner of Ekerubo Settlement Scheme/36 and that he purchased it alone. That he subdivided it into three portions in the year 2012 out of which he gave each of his wives 21 acres while he retained a portion being parcel number 187 in his name. He added that each of his two wives got a title in their name. That he married Monica in 1954, that he went to live in the settlement scheme in 1968 and stayed there alone until 1971 when Monica joined him. He also stated that he married Josephine in 1968 and stayed with her at his ancestral home before she moved to the settlement scheme in 1975.

27.He further testified that he acquired Ekerubo Settlement Scheme/36 from the Co-operative and that he paid the Co-operative loan from proceeds of milk from his cows assisted his first wife. He added that he instituted Keroka PM Criminal Case No. 659 of 2007 against his sons Joel and Henry who were charged and convicted of assault. He denied that he had favoured his second wife and added that he was issued with a court order to sub divide the land. He also stated that his first wife had twelve children while his second wife had eleven children and that all the children were living on and cultivating Ekerubo Settlement Scheme/36.

28.DW1 further stated that he completed the loan from the Settlement Fund Trustees in 1981 and that both his wives contributed to the repayment. That the land was allocated to him alone and that he later subdivided it to his two wives by

giving each 21 acres and retaining 4 acres. He concluded by stating that three of his sons, being Henry, Joseph and Otao had built their houses on his portion.

29. On 27<sup>th</sup> July 2021, the Court was informed that Nahashon Gekara Okero had passed away on 20<sup>th</sup> June 2021. Subsequently, an application seeking his substitution with Zachary Onchwari Gekara was filed on 14<sup>th</sup> December 2021. The substitution was allowed the same day the application was filed. Subsequently, however, the Court (differently constituted) set aside the said substitution through ruling delivered on 25<sup>th</sup> May 2022.

30. Earlier, the consolidated cases were transferred to ELC Nyamira where upon arrival they were assigned the global case number Nyamira ELCC No. 97 of 2021. Proceedings from 8<sup>th</sup> November 2021 onwards were conducted before ELC Nyamira.

31. The Defence case was later closed on 19<sup>th</sup> June 2024 and directions for filing and exchange of submissions given.

32. Submissions dated 4<sup>th</sup> July 2024 and further submissions dated 27<sup>th</sup> October 2025 were filed by Nyariki & Co Advocates who indicated at the end of the said submissions that they were filed for the Defendants. There were also submissions dated 13<sup>th</sup> October 2025 which were filed by Asati, Anyona and Company Advocates who indicated in the heading of the submissions that they were Plaintiff's submissions and at the

end of the said submissions that they were filed for the Defendants.

33.Asati, Anyona and Company Advocates submitted that the Plaintiff in Kisii HCCC No. 377 of 2012 never obtained grant of letters of administration to warrant him to bring the suit on behalf of the estate of Monica Sigara Gekara (deceased) and that he therefore lacked *locus standi* to institute the suit. It was further submitted that Nahashon Gekara (DW1) testified that parcel number Ekerubo Settlement Scheme/36 was subdivided into three new titles being Ekerubo Settlement Scheme/187, 188 and 189 and that consequently, parcel number Ekerubo Settlement Scheme/36 no longer existed. The Court was therefore urged to dismiss all the suits with no orders as to costs and that the parties should subject Ekerubo Settlement Scheme/187, 188 and 189 to succession.

34.On their part, Nyariki & Co Advocates submitted that the Plaintiffs in Kisii ELCC No. 58 of 2015 and Kisii ELCC No. 59 of 2015 who were the Defendants in Kisii HCCC No. 377 of 2012 both passed away and were never substituted. That, consequently, the suits abated and there remains no suit before the Court for determination. They urged the Court to close all the files.

35.I have considered the pleadings, the evidence and the submissions. The issues that arise for determination are whether David Arita Gekara had *locus standi* to file HCCC No.

377 of 2012 on behalf of the estate of Monicah Sigara Gekara (deceased), whether the suits are abated, and if not, whether the reliefs sought are available.

36. A perusal of the heading of the Complaint in HCCC No. 377 of 2012 reveals that David Arita Gekara filed the case ostensibly “as the legal representative of the late Monicah Sigara Gekara.” Did he have *locus standi* to do so? *Locus standi* is defined in **Black’s Law Dictionary**, 9<sup>th</sup> Edition (page 1026) as “*the right to bring an action or to be heard in a given forum*”.

37. It is not in dispute that Monicah Sigara Gekara had passed away by the time HCCC No. 377 of 2012 was filed. David Arita Gekara himself averred that he filed the case on behalf of her estate and even testified that she died in the year 2011. In fact, all the witnesses who testified were unanimous that she had passed away before the proceedings commenced.

38. The law is that a cause of action vested in or against the estate of a deceased person can only be validly agitated by or against the personal representative of the estate. See **Trouistik Union International & another v Jane Mbeyu & another [1993] eKLR** and **CKM v ENM & another (Civil Appeal 250 of 2019) [2024] KECA 293 (KLR) (8 March 2024) (Judgment)**.

39. The Court of Appeal emphasised the foregoing in **Rugiri v Kinuthia & 3 others [2024] KECA 1601 (KLR)** where it held thus:

***Decided cases are in agreement that where a suit is filed relating to a deceased's estate without a grant of representation, the proceedings are null and void for want of locus standi. (See Virginia Edith Wamboi vs. Joash Ochieng Ougo & Another [1982-88] 1 KAR and Trouistik Union International & Another vs. Jane Mbeyu & Another Civil Appeal No. 145 of 1990). It follows, therefore, that for a party to have locus standi to institute or defend a case for and on behalf of a deceased person, he or she must first obtain a grant of letters of administration empowering him or her to administer the deceased's estate or a limited grant limited for the purpose of filing or defending the suit.***

40. I have perused the documents that David Arita Gekara filed at the commencement of HCCC No. 377 of 2012. There was no grant of representation included in the list of documents. Even when he testified, he did not produce any grant of representation. I am therefore persuaded that David Arita Gekara was not a personal representative of the estate of Monicah Sigara Gekara (deceased) as of the date of filing HCCC No. 377 of 2012. Consequently, he lacked *locus standi* to institute the said suit. I hereby strike out the said suit.

41. The next issue for determination is whether the remaining suits, Kisii ELCC No. 58 of 2015 and Kisii ELCC No. 59 of 2015,

are abated. Kisii ELCC No. 58 of 2015 was filed by Josephine Kwamboka Gekara while Kisii ELCC No. 59 of 2015 was filed by Nahashon Gekara Okero.

42. It is not in dispute that both Josephine Kwamboka Gekara and Nahashon Gekara Okero have since passed away. There is a certificate of death on record stating that Josephine Kwamboka Gekara died on 15<sup>th</sup> August 2017. The record does not show that she was ever substituted as Plaintiff in Kisii ELCC No. 58 of 2015.

43. Equally, it is on record that the Court was informed on 27<sup>th</sup> July 2021 that Nahashon Gekara Okero passed away on 20<sup>th</sup> June 2021. Although he was substituted with Zachary Onchwari Gekara on 14<sup>th</sup> December 2021, the substitution was later set aside on 25<sup>th</sup> May 2022.

44. Pursuant to **Order 24 rule 3** of the **Civil Procedure Rules**, a suit abates if a deceased Plaintiff is not substituted within one year of death. The rule provides:

***(1) Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the***

***deceased plaintiff to be made a party and shall proceed with the suit.***

***(2)Where within one year no application is made under subrule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff:***

***Provided the court may, for good reason on application, extend the time.***

45.It follows therefore that Kisii ELCC No. 58 of 2015 abated on 15<sup>th</sup> August 2018 while Kisii ELCC No. 59 of 2015 abated on 20<sup>th</sup> June 2022. It is now over three years and eight months since the last of the suit abated. No application for revival under **Order 24 rule 7(2)** of the **Civil Procedure Rules** has been filed. Based on the submissions filed by the parties, it is clear that there is no intention to file such an application. The two files shall remain closed.

46.Given the answers to the first two issues for determination, the answer to the last issue for determination, as to whether the reliefs sought are available, is plain: no reliefs can issue from non-existent suits.

47.Arising from the foregoing, I make the following orders:

- a) Kisii HCCC No. 377 of 2012 which later became Kisii ELCC No. 1143 of 2016 is struck out for want of *locus standi* on the part of David Arita Gekara.**
- b) Kisii ELCC No. 58 of 2015 and Kisii ELCC No. 59 of 2015 abated. The two files shall remain closed.**
- c) Considering the outcome and the relationship between the parties, I make no order as to costs.**

**Dated, signed, and delivered at Nyamira, this 25<sup>th</sup> day of March 2026.**

**D. O. OHUNGO  
JUDGE**

Delivered in the presence of:

Anyona for the Plaintiff

Mr Aminga holding brief for Mr Nyariki for the Defendants

Court Assistant: B Kerubo