

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA

ELCLC NO 3 OF 2023

**MESHACK MACHARIA MWANGI.....1ST
PLAINTIFF**

**ESTHER WAMUYU MWANGI.....2ND
PLAINTIFF**

**LOISE NYAMBURA MOSES (suing as legal representatives
of the estate of MARION WAIRIMU MWANGI alias MARIO
WAIRIMU MWANGI
(Deceased).....3RD PLAINTIFF**

VERSUS

**AGNES WANGUI KAGEMA.....1ST
DEFENDANT**

**SETTLEMENT FUND TRUSTEES.....2ND
DEFENDANT**

RULING:

In the Application dated the 29/9/2025, the Plaintiffs seek for orders that the name of the 1st Plaintiff be removed from the Decree following his demise on 14/3/2024 and that a portion of 4 Acres be excised from L.R No. NYANDARUA/KAIMBAGA/128 and registered in the names of 2nd and 3rd Plaintiffs as the Legal

Representatives of the Estate of Mariam Wairimu Mwangi alias Mario Wairimu Mwangi (Deceased).

The Plaintiffs also pray for **address** that upon the excision and requisition of the 4 Acres' portion, the positions of L.R No. NYANDARUA/KAIMBAGA/127 be swapped in the Registry Index Map with NYANDARUA/KAIMBAGA/128 to reflect the ground occupation of the Plaintiffs and the 1st Defendant respectively in line with the **costs**, Judgment and resultant Decree. And finally, the Deputy Registrar of this Court be authorized to execute all the necessary mutation and transfer Documents for the excision and transmission of the said 4 Acres in favour of the 2nd and 3rd Plaintiffs.

The grounds upon which the above orders are sought are that Judgment in this case was delivered on 7/12/2023 and with no appeal preferred. But later on 14/3/2024 the 1st Plaintiff died before the Decree was executed. The Decree was to the effect that: -

- a. An order be and is hereby made for the excision of a portion of 4 Acres out of plot No. 128 Kaimbaga Settlement Scheme currently occupied by the 1st Defendant for the benefit of the Estate of the late Mariam Wairimu Mwangi.
- b. The 2nd Defendant together with the County Surveyor, Nyandarua shall effect consequential amendments of occupation, Registry Index Map (RIM) to read the Ground

Occupation of Titles Nos. NYANDARUA/KAIMBAGA/128 in terms of the agreement dated 6/9/2018.

The Applicants also urge that since the County Surveyor has already excised the 4 Acres as decreed and that the 1st Defendant has been uncooperative in the execution of the Decree as ordered by this Court then the Deputy Registrar should go ahead and execute all the documents necessary for the satisfaction of the Decree.

The above Application was not opposed. I first and foremost wish to state in my Ruling that prayer No. 4 of the Application is unnecessary since the same is part of the Judgment of the Court. It would be therefore be redundant to issue the same for the second time. I will therefore not re-issue it. What was given in the Judgment suffices.

As for the removal of the 1st Plaintiff from the Decree, it is unfortunate that the execution of the Decree issued on 7/12/2023 is yet to be executed from 7/12/2023 to 14/3/2024 when the 1st Plaintiff died which is a period of over 3 months and that was enough time to have executed the Decree. It is true Section 34 of the Civil Procedure Act mandates the Court that passed the Decree to determine all questions arising between parties relating to the execution, discharge or satisfaction of a Decree.

Further, Section 75A of the Law of Succession Act (Cap 160 Laws of Kenya) implies that where there are more than 1 surviving Administrators in a suit the Court should proceed with the more

than 1 Administrators. It is only where there is only one Administrator surviving the Administration of the Estate when there is a trust that **other** or other Administrators must be appointed either by the remaining Administrators or the Court. In addition, Order 24 Rules 2,3.....of the Civil Procedure Rules are also applicable.

I am therefore properly guided by the above position of the Law that it would not be prejudicial to anyone to remove the name of the 1st Plaintiff since the 2 surviving Administrators would be able to execute the Decree and I so order that the name of the 1st Plaintiff, the late Meshack Macharia Mwangi be removed as a Plaintiff in this suit and that the Decree of 23/2/2024 be executed forthwith with the assistance of the Deputy Registrar of this Court.

These are the orders of the Court.

Ruling read and delivered at Nyandarua this 26th Day of March 2026.

MUGO KAMAU
JUDGE

In the Presence of: -
Court Assistant: Samson.

For the Plaintiffs.....Mr. Wang'ondu.

