



**Ngage v Maina (Sued as Legal Representative of Joseph Maina Munyua) & another; Mbugua & another (Interested Parties) (Environment and Land Case E329 of 2024) [2025] KEELC 5546 (KLR) (22 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5546 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E329 OF 2024**

**JG KEMEI, J  
JULY 22, 2025**

**BETWEEN**

**MARY WANGUI NGAGE ..... PLAINTIFF**

**AND**

**BEATRICE NDUNDU MAINA (SUED AS LEGAL REPRESENTATIVE OF JOSEPH MAINA MUNYUA) ..... 1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**ERNEST MBUGUA ..... INTERESTED PARTY**

**FLORENCE WANJIRU MBUGUA (SUED AS LEGAL REPRESENTATIVE OF ROSEMARY WANJIKU MUNYUA) ..... INTERESTED PARTY**

**RULING**

(In respect of the 1st Defendant's Notice of Motion Application dated 5/05/2025)

1. Before this Court for determination is the 1<sup>st</sup> Defendant's Notice of Motion application dated 5/05/2025 anchored on the provisions of Sections 1A, 1B, 3A & 63(e) *Civil Procedure Act* Cap 21, Order 2 Rule 15(1) (a) *Civil Procedure Rules* 2010. The Applicant prays for orders that;
  - a. This suit is hereby struck out for disclosing no reasonable cause of action.
  - b. Costs be to the 1<sup>st</sup> Defendant/Applicant.
2. The application is premised on the grounds that the Plaintiff has failed to disclose her interest in the subject matter of the suit. The 1<sup>st</sup> Defendant/Applicant avers that this Court had previously, in Nairobi ELC No. 556 of 2010 ruled in the application dated 15/02/2024 held that both the Plaintiff and the



1<sup>st</sup> Interested Party had disclosed no interest to be joined in that suit in which the subject matter was the similar land herein, which decision is binding to date. She contends that the suit is therefore *res judicata*.

3. The Applicant argues that the issue of succession was fully ventilated in NBI HC Succession Cause No. 3065 of 2001 hence this Court is not competent to re-litigate it. She states that this suit relates to the same subject matter that was under consideration in NBI ELC 556 OF 2010, and therefore is unsustainable, the earlier suit having been withdrawn by the plaintiff at the point of defence as an afterthought and upon a declaration that the withdrawing party was exhausted by litigation: this suit is thus brought in bad faith and maliciously so.

### **Plaintiff's Replying Affidavit**

4. The application is opposed by Mary Wangui Ngage, the Plaintiff herein vide her Replying Affidavit dated 21/05/2025. She avers that she has an interest in the suit land as the suit property belongs to her late father-in-law, one Francis Munyua Maina. She states that her cause of action is the fraudulent registration of the suit property in the name of the 1<sup>st</sup> Defendant after the death of her father-in-law. She argues that the said registration in the name of the 1<sup>st</sup> Defendant was in trust for the children of the late Francis Munyua Maina hence her interest in the suit property.
5. She confirms that in deed they had sought to be joined in Nairobi ELC Case No. 556 of 2010 as interested parties which application was denied. That the said suit was eventually withdrawn by the Plaintiff therein on 24/02/2025.
6. The Plaintiff argues that their application for joinder having not been allowed, they were not parties in Nairobi ELC 556 of 2010. She avers that the suit herein has more parties including the Attorney-General. Further that in the absence of a determination on the 1<sup>st</sup> Defendant's fraudulent acquisition of the suit property. The suit herein cannot therefore be said to be *res judicata*.
7. In reference to the suit in Nairobi HC Succession Cause No. 3065 of 2001 stated that it relates to the Estate of Teresia Wanjiku Maina while the case herein touches on fraudulent registration of the title in the 1<sup>st</sup> Defendant's name. She therefore prays that the Court grants her a chance to be heard and that the 1<sup>st</sup> Defendant's objection should be raised in the main suit.

### **Court's Directions**

8. The Court directed that the application be canvassed by way of Written Submissions. Both parties complied. The 1<sup>st</sup> Defendant/Applicant's submissions are dated 5/07/2025 whereas the Plaintiff's submissions are dated 21/5/2025. The Court has had the opportunity to read and considered the said submissions.

### **Analysis and Determination**

9. Having considered the application and the arguments for and against, the main issue for determination is; whether the application is merited.
10. Order 51 Rule 4 of the [Civil Procedure Rules](#) on the contents of the Notice of Motion provides that:

“Every notice of motion shall state in general terms the grounds of the application, and where any motion is grounded on evidence by affidavit, a copy of any affidavit intended to be used shall be served.”



11. An affidavit sworn statement under oath made in accordance with the *Oaths and Statutory Declarations Act*, Cap. 15 Laws of Kenya. An Affidavit in support of an application serves as the factual basis upon which the orders sought are granted. It contains facts demonstrating why the requested relief should be granted. Affidavits serve as substitutes for oral testimony, allowing Courts to consider written evidence without requiring witnesses to appear in person for every legal matter.
12. Interalia, from my reading of the pleadings of the parties coupled with the arguments advanced by the parties it would appear that there are contentious matters worth inquiry by this Court.
13. Consequently, the 1<sup>st</sup> Defendant's Notice of Motion dated 5/05/2025 is hereby struck-out with costs to the Plaintiff.
14. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22<sup>ND</sup> DAY OF JULY, 2025  
VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered Online in the Presence of;

NA for the Plaintiff

Mr. Ombwayo for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

NA for the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties.

CA – Ms. Yvette Njoroge

