



Kihara & 2 others (Suing as Administrators to the Estate of Francis Kihara Ng'ang'a - Deceased) v Njoroge (Environmental and Land Originating Summons E013 of 2023) [2024] KEELC 397 (KLR) (31 January 2024) (Judgment)

Neutral citation: [2024] KEELC 397 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E013 OF 2023
BM EBOSO, J
JANUARY 31, 2024**

BETWEEN

**MARY WAIRIGIA KIHARA 1ST PLAINTIFF
ELIZABETH WAMBUI DAVID 2ND PLAINTIFF
GRACE WANJAHU WANJIRU 3RD PLAINTIFF
SUING AS ADMINISTRATORS TO THE ESTATE OF FRANCIS KIHARA
NG'ANG'A - DECEASED**

AND

PETER NJUGUNA NJOROGE DEFENDANT

JUDGMENT

1. Through an originating summons dated 6/4/2023, the estate of the late Francis Kihara Nganga (referred to in this Judgment as “the deceased”) invited this court to determine the following questions;
 - a. Whether the caveat/caution lodged on the parcel of land known as land reference number Karai/Karai/579 (hereinafter referred to as the “suit property”) as entry number 6 should be removed.
 - b. Whether the Lands Registrar - Kiambu, should withdraw and deregister the caveat/caution registered as entry number 6 in the inhibition/proprietary section of title to the suit property and thereafter reinstate the suit property to the estate of Francis Kihara Ng'ang'a without any encumbrances or inhibitions for purposes of distribution.
 - c. Whether the defendant is liable to pay damages to the plaintiffs as compensation for placing a wrongful caution as provided under Section 75 of the [Land Registration Act](#), 2012.



- d. Whether the Defendant should bear the costs of the Originating Summons.
2. It was contended that the impugned caution was placed on the register at the behest of the defendant, Peter Njuguna Njoroge.
 3. When the originating summons came up for directions, the court directed the plaintiffs to effect service of summons and hearing notice on the defendant through a prominent notice in either the Daily Nation or the Standard Newspaper. The court set down the suit for hearing on 31/1/2024. The plaintiffs subsequently filed an affidavit of service indicating that the defendant had been served through a notice published in the Standard Newspaper edition of 1/12/2023. Consequently, the suit was heard ex-parte as an undefended cause today morning. It now falls for determination.
 4. The case of the estate of the late Francis Kihara Nganga (referred to in this Judgment simply as “the estate”) is that the three plaintiffs are the duly appointed administrators of the estate. They contend that the deceased purchased land parcel number Karai/Karai/579 [the suit property] from Njoroge Chogo Njoroge in 1984 at Kshs 20,000 and the land was transferred to the deceased by the vendor. In 1986, the defendant caused a caution to be registered against the land register relating to the land. To date, the defendant has not bothered to ventilate his claim in a court of law.
 5. The plaintiffs further contend that the deceased took vacant possession of the land in 1984 and he lived on the land with his family uninterrupted until his demise in 2017. His estate has continued to enjoy quiet possession of the land. They add that they are at the stage of finalizing distribution of the deceased’s estate, adding that the distribution process has been hampered by the subsisting caution that is now about 38 years old. They urge the court to lift the caution.
 6. At the hearing, the plaintiffs called Mary Warigia Kihara as a witness. She testified as PW1. She adopted her affidavit sworn on 6/4/2023. She produced 8 exhibits, among them: (i) copy of the land certificate issued to Francis Kihara Nganga on 24/12/1984, and (ii) copy of the land register relating to Karai/Karai/579.
 7. The court has considered the four questions that it was invited to determine. The four questions revolve around entry number 6 which relates to a caution that Peter Njuguna Njoroge caused to be registered in the land register relating to Karai/Karai/579 on 30/7/1986. A perusal of the land register which the plaintiffs produced as part of their evidence reveals that on 31/1/2019, the Land Registrar made entry number 7 in the register, registering a decree issued in ELC Case No 689 of 2018 (OS) [sic] dated 16/11/2018. The decree revoked and vacated entry numbers 2, 3, 4, 5 and 6 from the land register. It is also observed that subsequent to that, the Land Registrar closed the title on revision vide a court order. For avoidance of doubt, the following verbatim text appears under entry No 7:

“31.1.2019. Decree Entry No 1, 2, 3, 4, 5, 6 Above Revoked Vide ELC No 689 of 2018/OS)
Dated 16/11/2018. 18.08.19 Title Closed on Revision Vide Court Order ELC 689 of 2018
at Thika.”
 8. Arising from the above revelations in the land register that was exhibited, the Court took the liberty to call for the record relating to Thika ELC Case No 689 of 2018 (OS). Information from the Court Registry revealed that in 2018 Thika ELC Station registered less than 400 cases. The Court Registry nonetheless uploaded and availed to the Court a Judgment from Kenya Law relating to Thika ELC Case No 689 of 2017 rendered by Gacheru J on 16/11/2018.
 9. A perusal of the said Judgment reveals that Peter Njuguna Njoroge filed Thika ELC Case No 689 of 2017 against Philip Maina Kamau [1st Defendant]; Francis Kihara Nganga [2nd Defendant]; Attorney General [3rd Defendant], and Land Registrar – Kiambu [4th Defendant]. An affidavit of service was



subsequently filed showing that the four defendants had been served on 22/8/2017. None of the above four defendants entered appearance. Consequently, the case was heard ex-parte and Judgment was rendered in favour of the plaintiff in the said suit. The gist of the Judgment is that the subdivision which had created Karai/Karai/578, 579 and 580 out of Karai/Karai/450 were cancelled and the land reverted to the original proprietor, Njonge Chungu Njoroge, as parcel number Karai/Karai/450.

10. Given the evidence presented in the present Originating Summons and the Judgment alluded to above, it is clear that the plaintiffs presented and prosecuted their Originating Summons under the mistaken belief that parcel number Karai/Karai/579 exists and is still registered in the name of the late Francis Kihara Nganga. They also proceeded under the mistaken belief that the caution registered as entry number 6 subsists. The land register relied upon by the plaintiffs reflects a completely contrary scenario. The Judgment in Thika ELC Case No. 689 of 2017 similarly reflects a scenario contrary to the position held by the estate of the late Frrancis Kihara Nganga. In a nutshell, the land register placed before Court reflects that the impugned caution was removed and does not exist.
11. The result is that, given the above evidence and Judgment, the four questions presented in the Originating Summons dated 6/4/2023 are not capable of attracting sensible legal answers. The Court considers the Originating Summons to have been brought under a misapprehension of the factual circumstances. I will in the circumstances strike out the Originating Summons with no order as to costs. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 31ST DAY OF JANUARY 2024.

B M EBOSO

JUDGE

In the presence of: -

Mr. Mworira for the Plaintiffs

No appearance by the Defendant

Court Assistant: Hinga

