



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ELC CASE NO. 185 OF 2016**

**LYDIA WANJIKU MARINGA** (Suing as the Legal Representative of the

Estate of the late **LEONARD MARINGA MUNYI**.....**PLAINTIFF**

**VERSUS**

**FRANCIS KINYUA MARINGA**.....**1<sup>ST</sup> DEFENDANT/RESPONDENT**

**SERWASIO MURIUKI MARINGA**.....**2<sup>ND</sup> DEFENDANT/RESPONDENT**

**EVANS MACIGO MARIA**.....**3<sup>RD</sup> DEFENDANT/RESPONDENT**

**JUDGMENT**

Though drawn by an advocate trading under the names **MAGUTA KIMEMIA & ASSOCIATES ADVOCATES**, the plaint herein serves as a perfect example of “*how not to draw a plaint*”. Fortunately for the plaintiff, no defence was filed against the plaint and therefore the plaintiff’s lack of elegant drafting largely went un-tested. Counsel must draw proper pleadings because that is why they are instructed in the first place. Sadly however, the pleadings herein, if indeed they were drawn by an advocate’s firm, must have been delegated. But surely even if you delegate, you must supervise!

On 16th November 2016, the plaintiff herein suing as the legal representative of the Estate of the late **LEONARD MARINGA MUNYI** (the deceased) filed this suit seeking judgment against the defendants in the following terms:

*(a) A temporary and permanent injunction to restrain the 1st, 2nd and 3rd defendants, their agents, servants and/or assigns from entering into, trespassing onto, cultivating, demolishing structures thereon, disposing, selling, interfering with and/or in any other manner whatsoever dealing with any or all those parcels of land known as KABARE/NYANGATI/1998, 1882, 1885, 1892, 3193, 1891 and 3192 (hereinafter referred to as the suit properties) pending the hearing and determination of this application.*

*(b) A temporary and permanent injunction to restrain the 1st, 2nd and 3rd defendants, their agents, servants and/or assigns from entering into, trespassing, onto, cultivating, demolishing structures thereon, disposing, selling, interfering with and/or in any other manner whatsoever dealing with any or all those parcels of land known as KABARE/NYANGATI/1889, 1882, 1885, 1892, 3193, 1891 and 3192 (hereinafter referred to as the suit properties) pending the hearing and determination of this suit.*

*(c) A temporary and permanent injunction to compel the 1st, 2nd and 3rd defendants to yield up,*

*vacate and/or grant vacant possession or all those parcels of land known as KABARE/NYANGATI/1889, 1882, 1885, 1892, 3193, 1891 and 3192 (hereinafter referred to as the suit properties).*

*(d) A declaration that parcels No. KABARE/NYANGATI/1889, 1882, 1885, 1892, 3193, 1891 and 3192 be vested back to the Estate of the late LEONARD MARINGA MUNYI to be administered by the Administrator as per the law and order issued by Court on 16th September 2015.*

*(e) A mandatory injunction directing the Registrar of titles or the relevant authority to effect transfer of all those parcels of land known as KABARE/NYANGATI/1889, 1882, 1885, 1892, 3193, 1891 and 3192 (hereinafter referred to as the suit properties) to the Estate of the late LEONARD MARINGA MUNYI.*

*(f) A mandatory injunction directing the Registrar of titles or the relevant authority to cancel and revoke any and all titles illegally arising out of any and all prior transactions over all those parcels of land known as KABARE/NYANGATI/1889, 1882, 1885, 1892, 3193, 1891 and 3192 (hereinafter referred to as the suit properties).*

*(g) General damages for trespass.*

*(h) Special damages.*

*(i) Interest on (g) above.*

*(j) Any other relief that this Honourable Court may deem fit and just to grant.*

The plaintiff is a daughter of the deceased and administratrix of his Estate while the 1st and 2nd defendants are her brothers. It is the plaintiff's case that having obtained a grant of letters of administration in respect to the deceased Estate, she visited the Land Registry and discovered that the suit properties had been interfered with and for instance, land parcel No. KABARE/NYANGATI/1882 had been transferred by the deceased to the 1st and 2nd defendants by way of an alleged gift on 21st April 2015 and yet the deceased had died on 28th December 2013. She also discovered that on 25th June 2015, the 3rd defendant had been issued with a title to land parcel No. KABARE/NYANGATI/1882 while the 1st defendant had fraudulently transferred land parcel No. KABARE/NYANGATI/3193 to himself. All this was done notwithstanding the fact that the plaintiff had placed cautions on the suit properties. The particulars of fraud were pleaded in paragraph 12 of the plaint.

The record shows that on 13th January 2017, the defendants were all served with the plaint and summons to enter appearance by **MR. GACHECHE WA MIANO** an Advocate of this Court and who is also appearing for the plaintiff. The defendants entered appearance through the firm of **IGATI MWAI** Advocate on 23rd January 2017 but no defence was filed and so on 9th March 2017, interlocutory judgment was entered against the defendants and the matter came up for formal proof on 15th May 2017 when the defendants were also served with a hearing notice but did not attend.

The interlocutory judgment entered against the defendants was not really necessary because, since the claim against the defendants was not liquidated, all that the plaintiff needed to do was to list down the case for hearing as provided for under **Order 10 Rule 9 of the Civil Procedure Rules**. However, no prejudice has been caused to the defendants in any way.

The plaintiff **LYDIA WANJIKU MARINGA** (PW1), testified in support of her case and called as her witnesses her sisters **HELEN WANGECI MARINGA** (PW2) and **ALICE WAMBURA MARINGA** (PW3).

Their evidence was that prior to his death on 28th December 2013, the deceased who had two sons (1st and 2nd defendants) and eight daughters owned land parcels No. KABARE/NYANGATI/1889, 1882,

1885, 3193 and 1892 and so with the consent of the other siblings, the plaintiff applied for a grant of letters of administration in respect of his Estate. This was confirmed on 16th September 2016 (Exhibit 3). By that time, the 1st and 2nd defendants had already been given their own land and so they did not lay any claim to the parcels of land mentioned above. Therefore the said land parcels were to be shared among the plaintiff and her eight sisters as follows:-

1. **KABARE/NYANGATI/1889 - Equal share**
2. **KABARE/NYANGATI/1882 - To be registered jointly**
3. **KABARE/NYANGATI/1885 - ”**
4. **KABARE/NYANGATI/1892 - ”**
5. **KABARE/NYANGATI/3193 - ”**

However, a search at the Land Registry showed that land parcel No. KABARE/NYANGATI/1882 had been transferred to the 3rd defendant by the 1st and 2nd defendants who allegedly had obtained it as a gift from the deceased on 21st April 2015 yet the deceased had died on 28th December 2013. Also, land parcel No. KABARE/NYANGATI/3193 had on 8th July 2015 also been registered in the names of the 2nd defendant also as a gift by deceased. Those transfers were done fraudulently because the plaintiff had placed a caution thereon and the defendants did not even have the deceased's death certificate.

I have considered the plaintiff's evidence as supported by her two sisters PW2 and PW3. That evidence is not contested as the defendants, though served, did not file any defence and neither did they attend the Court for trial on 15th May 2017 though duly served through their advocate who had only entered appearance on their behalf.

It is clear from the confirmation of grant issued by **LIMO J.** on 16th September 2016 that the following five (5) properties comprising the Estate of the deceased were to be distributed between the plaintiff and her sisters as follows:

1. *CHRISTINE WANJIRU MARINGA*

*LYDIA WANJIKU MARINGA*

*HELLEN WANGECI*

*KABARE/NYANGATI/1889*

*MARY WAMBUI MUTONYI*

*NANCY WANGU MARINGA*

*- Equal shares*

*AGATA KARIUKO MARINGA*

*SERAPHINE WARUI MARINGA*

2. *CHRISTINE WANJIRU MARINGA*

*LYDIA WANJIKU MARINGA*

*HELEN WANGECI*

*MARY WAMBUI MUTONYI*

*KABARE/NYANGATI/1882*

*ALICE WAMBURA MARINGA*

NANCY WANGU MARINGA

- To be jointly registered

AGATA KARIUKO MARINGA

SERAPHINE WARUI MARINGA

3. CHRISTINE WANJIRU MARINGA

LYDIA WANJIKU MARINGA

HELEN WANGECI

MARY WAMBUI MUTONYI

KABARE/NYANGATI/1885

ALICE WAMBURA MARINGA

NANCY WANGU MARINGA

- To be jointly registered

AGATA KARIUKO MARINGA

SERAPHINE WARUI MARINGA

4. CHRISTINE WANJIRU MARINGA

LYDIA WANJIKU MARINGA

HELEN WANGECI

MARY WAMBUI MUTONYI

KABARE/NYANGATI/1892

ALICE WAMBURA MARINGA

NANCY WANGU MARINGA

- To be registered jointly

AGATA KARIUKO MARINGA

SERAPHINE WARUI MARINGA

5. CHRISTINE WANJIRU MARINGA

LYDIA WANJIKU MARINGA

HELEN WANGECI

MARY WAMBUI MUTONYI

KABARE/NYANGATI/3193

ALICE WAMBURA MARINGA

NANCY WANGU MARINGA

- To be registered jointly

AGATA KARIUKO MARINGA

SERAPHINE WARUI MARINGA

Therefore although the plaintiff referred to seven (7) properties in her plaint, it is clear from the confirmation of grant and the other documents that she produced as exhibits that the deceased's Estate

only comprised of the following properties:

**KABARE/NYANGATI/1882**

**KABARE/NYANGATI/1885**

**KABARE/NYANGATI/1889**

**KABARE/NYANGATI/1892 and**

**KABARE/NYANGATI/3193**

And out of the above properties, the following three properties are still in the name of the deceased as per the certificate of searches:

KABARE/NYANGATI/1885

KABARE/NYANGATI/1889 and

KABARE/NYANGATI/1892

The 2nd defendant has however placed a caution on the above three properties. It is not clear why he has done so and since those properties were distributed to the plaintiff and her sisters and since the 2nd defendant has not attended Court to explain why he has placed cautions thereon, this Court can only conclude that the cautions on those parcels are illegal.

There is also evidence from the certificate of search in respect to land parcels No. KABARE/NYANGATI/1882 and KABARE/NYANGATI/3193 showing that those parcels are now registered in the names of the 3rd and 1st defendant respectively. Again, those two parcels, as per the confirmation of grant, were to be jointly registered in the names of the plaintiff and her sisters. Therefore, any transfer of those parcels of land to the 3rd and 1st defendant, and indeed to any other party, can only have been done fraudulently and must therefore be cancelled as prayed. The plaintiff is also entitled to an order of permanent injunction to restrain the defendants from trespassing thereon or to give vacant possession thereof if they have already trespassed.

No evidence has been placed before me in the form of certificates of searches or other evidence to show the current position of the other seven (7) parcels of land referred to in the plaint. I am not therefore in a position to know if those parcels have been interfered with by any of the defendants as alleged in the plaint. This Court will therefore not make any orders with regard to those properties which are not part of those listed in the confirmation of grant.

Ultimately therefore, and believing the plaintiff's uncontroverted evidence as I hereby do, I am satisfied that she has proved her case as required in law. I therefore enter judgment for the plaintiff against the defendants in the following terms:

***1. An order of permanent injunction restraining the defendants, their agents, servants or assigns from entering into, trespassing onto, cultivating, demolishing structures thereon, disposing, selling, interfering with or in any other manner whatsoever dealing with land parcels No:***

***(a) KABARE/NYANGATI/1889***

***(b) KABARE/NYANGATI/1882***

***(c) KABARE/NYANGATI/1885***

***(d) KABARE/NYANGATI/1892 and***

**(f) KABARE/NYANGATI/3193**

**2. A declaration that land parcels No:**

**(a) KABARE/NYANGATI/1889**

**(b) KABARE/NYANGATI/1882**

**(c) KABARE/NYANGATI/1885**

**(d) KABARE/NYANGATI/1892 and**

**(e) KABARE/NYANGATI/3193 belong to the Estate of the deceased LEONARD MARINGA MUNYI and are to be administered as per the confirmation of grant issued on 16th September 2015. Any caution lodged on any of those parcels by the defendants be removed forthwith.**

**3. An order directing the Land Registrar to cancel the registration of land parcels No. KABARE/NYANGATI/1882 and KABARE/NYANGATI/3193 in the names of the 3rd and 1st defendant respectively and the same to revert to the Estate of the deceased by cancellation of any titles issued to the 3rd and 1st defendant or any other person.**

**4. There will be no order for any general or special damages as no evidence was led on general damages for trespass and neither were any special damages pleaded or proved as required.**

**15. The 3rd defendant will meet the plaintiff's costs. I will not make any order for costs against the 1st and 2nd defendants being siblings to the plaintiff.**

**It is so ordered.**

**B. N. OLAO**

**JUDGE**

**14<sup>TH</sup> JULY, 2017**

Judgment delivered, dated and signed in open Court this 14<sup>th</sup> day of July 2017

Mr. Miano for Plaintiff present

Mr. Mwai for Defendants – absent

Right of appeal explained.

**B. N. OLAO**

**JUDGE**

**14<sup>TH</sup> JULY, 2017**