



Shah & 6 others v Ngunyangi & Munene (Sued as the Legal Representatives of Ben Ngunyangi Iragu - Deceased) & 4 others (Environment & Land Case 115 of 2019 & 519 of 2013 & Civil Case 317 of 2011 (Consolidated)) [2024] KEELC 814 (KLR) (21 February 2024) (Ruling)

Neutral citation: [2024] KEELC 814 (KLR)

FORMERLY HCC NO 122 OF 2002

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 115 OF 2019 &
519 OF 2013 & CIVIL CASE 317 OF 2011 (CONSOLIDATED)**

FM NJOROGE, J

FEBRUARY 21, 2024

BETWEEN

GIRISH VAGHJI SHAH 1ST PLAINTIFF

VIPUL PATEL 2ND PLAINTIFF

AND

**LUCY NJERI NGUNYANGI AND MAXWELL MUNENE (SUED AS
THE LEGAL REPRESENTATIVES OF BEN NGUNYANGI IRAGU -
DECEASED) 1ST DEFENDANT**

LAND REGISTRAR NAKURU 2ND DEFENDANT

AS CONSOLIDATED WITH

CIVIL CASE 317 OF 2011

BETWEEN

LUCY NJERI NGUNYANGI 1ST PLAINTIFF

MAXWELL MUNENE 2ND PLAINTIFF

ESTHER WANGUI 3RD PLAINTIFF

JENIPHER WANGARI 4TH PLAINTIFF

AND

THE CHIEF LAND REGISTRAR DEFENDANT



**AS CONSOLIDATED WITH
ENVIRONMENT & LAND CASE 519 OF 2013**

BETWEEN

FRANCIS GACHIRI NDUA PLAINTIFF

AND

LUCY NJERI NGUNYANGI 1ST DEFENDANT

MAXWELL MUNENE 2ND DEFENDANT

RULING

1. This is a ruling on an application dated 12/6/2023 filed by the plaintiff under Sections 1A, 1B, 3A, Order 9 Rule 2, and Order 51 Rule 1 of the Civil Procedure Rules 2010. It seeks that this Honourable Court be pleased to approve and recognize Joseph Chege Muthama and Albert Gatimuh Nderitu as recognized agents for Girish Vaghji Shah and Vipul Patel, respectively the Plaintiffs in ELC No 115 of 2019 for purposes of making applications, entering appearance and testifying on behalf of the said Plaintiffs in this matter and that costs of this application be provided for.
2. The background to the present application is that the Plaintiff's Girish Vaghji Shah and Vipul Patel filed HCC No 12 of 2002 against the Defendants, the matter was later transferred to this court and became ELC No of 115 of 2019 and is now consolidated with HCCC No 317 of 2019 and Nakuru CMCC No 1074 of 2013; that on 19/6/2013 Girish Vaghji Shah and Vipul Patel appointed Joseph Chege Muthama and Albert Gatimuh Nderitu respectively as their Attorneys over all that parcel of land known as Nakuru Municipality Block XVIII/48 and the same were registered on 26/6/2013; that the said powers of attorney are general in relation to the Donor's interest of Girish Vaghji Shah and Vipul Patel in the above mentioned Title to do anything and everything that they could do, and for them and in their name to execute all such instruments and to do all such acts, matters and things as may be necessary or expedient for carrying out the powers hereby given; that the Plaintiffs later relocated to Australia where they currently reside; that the suit is now ready for hearing and bearing the complexity of the matter its incumbent that the matter proceeds in open court; that due to the fact that the Plaintiffs are not within the jurisdiction of this court it is only proper that the court do approve and recognize Joseph Chege Muthama and Albert Gatimuh Nderitu as holders of the Powers of Attorney for purposes of appearing and testifying and producing documents on their behalf since they have been swearing affidavits in the proceedings; that it is in the interest of justice that the court exercises its discretion and grants the orders sought and that the Defendants and all other parties will not be prejudiced if the orders sought are granted.
3. In the Supporting Affidavit dated 12/6/2023 sworn by Joseph Chege Muthama, he deposes that he holds a power of attorney in respect to the interest held by Vipul Thakarshi Patel on all that parcel of land known as Nakuru Municipality Block 18/48 and he has authority to swear the affidavit on behalf of Albert Gatimu Nderitu who is holding a power of attorney in respect of the interest held by Girish Vaghji Shah in the suit land. He stated that the Plaintiffs Girish Vaghji Shah and Vipul Thakarshi Patel filed HCC No 12 of 2002 as against the Defendant which suit was later transferred to this court and became ELC No 115 of 2019, the matter was consolidated with HCCC No 317 of 2019 and Nakuru CMCC No 1074 of 2013; that it is within his knowledge that the Plaintiffs Girish Vaghji Shah



and Vipul Thakarshi Patel later relocated to Australia where they currently reside; that it is within his knowledge that said powers of Attorney are general in relation to the Donor's interest of Girish Vaghji Shah and Vipul Patel over all that parcel of land known as Nakuru Municipality Block XVIII/48 to do anything and everything that they could do, and for them and in the name of the Plaintiffs to execute all such instruments and to do all such acts, matters and things as may be necessary or expedient for carrying out the powers given; that since the matters herein involves the proprietary interests held by the Plaintiffs in the suit property, by dint of the said power of attorney they are authorized to appear before this court on behalf of the Plaintiffs; that the Plaintiffs are desirous that this suit proceed to hearing and they be represented by Albert Gatimu Nderitu and the deponent to appear on their behalf in court to testify and produce documents on their behalf.

4. The court ordered the application be disposed of by way of written submissions.

Analysis and Disposition.

5. Order 9, Rule 2 of the *Civil Procedure Rules* provides:

The recognized agents of parties by whom such appearances, applications and acts may be made or done are—

- a. subject to approval by the court in any particular suit persons holding powers of attorney or an affidavit sworn by the party authorizing them to make such appearances and applications and do such acts on behalf of parties;
 - b. persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts;
 - c. in respect of a corporation, an officer of the corporation duly authorized under the corporate seal.
6. I have considered the Application dated 12/6/2023 and note that the Application was not responded to and there are no submissions filed by either party. The Court has therefore no option but to conclude that the Application is unopposed. In any event this court stood down PW1 on 31/5/2023 for the very purpose of giving the applicants a chance to make the present application.
 7. Consequently, the application dated 12/6/2023 is allowed in the following terms:
 - a. This Court approves and recognizes Joseph Chege Muthama and Albert Gatimuh Nderitu as agents for Girish Vaghji Shah and Vipul Patel, respectively the Plaintiffs in ELC No 115 of 2019 for purposes of making applications, entering appearance and testifying on behalf of the said Plaintiffs in this matter;
 - b. The applicants shall bear the costs of the instant Application;
 - c. This matter shall be mentioned before the ELC at Nakuru on 27/3/2024 for further directions.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 21ST DAY OF FEBRUARY, 2024.

MWANGI NJOROGE



JUDGE, ELC, MALINDI

