



**Kuira (Suing as the legal representatives of the Estate of Njagi Thika Thairu) v
Rugaita (sued on her own behalf and as the legal representative of the Estate of
her Husband the Late Eliud Rugaita W Murango - Deceased) (Environment &
Land Case E025 of 2021) [2024] KEELC 648 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 648 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE E025 OF 2021**

**JM MUTUNGI, J
FEBRUARY 15, 2024**

BETWEEN

**JOSHUA NJIRAINI KUIRA (SUING AS THE LEGAL REPRESENTATIVES OF
THE ESTATE OF NJAGI THIKA THAIRU) PLAINTIFF**

AND

**JACINTA WAIRIMU RUGAITA (SUED ON HER OWN BEHALF AND AS THE
LEGAL REPRESENTATIVE OF THE ESTATE OF HER HUSBAND THE LATE
ELIUD RUGAITA W MURANGO - DECEASED) DEFENDANT**

RULING

1. The Plaintiff herein instituted the present suit as the legal representative of Njagi Thika Thairu (deceased) *vide* a plaint dated 15th July 2021. The Plaintiff prayed for Judgment against the Defendant for:-
 - a. A declaration that the Defendant's husband Eliud Rugaita W. Murango and Lazarous Warui Frengi fraudulently caused L.R. Mwea/Tebere/B/275 to be transferred in their names.
 - b. A declaration that subdivision of L.R. Mwea/Tebere/B/275 by the Defendant into resultant portions being L.R. Mwea/Tebere/B/1904 -1936 is illegal, null and void.
 - c. Cancellation of titles for land parcel Numbers L.R. Mwea/Tebere/B/1904-1936 (33 portions) so that the land reverts back to original L. R. Mwea/Tebere/B/275 in the name of Njagi Thika (deceased).
 - d. Costs of the suit plus interest thereon to be calculated at Court rate.



2. The Defendant filed a defence dated 5th August 2021 and inter alia pleaded that the Plaintiff's suit was res judicata by reason of Embu Succession Cause No. 114 of 1983 where the same subject matter was in issue and was determined. The Defendant consequently filed a notice of preliminary objection dated 12th January 2023 setting out the following grounds:-
 1. The Plaintiff lacks locus standi as he is not the legal representative or administrator of Njagi Thika hence it offends the provisions of Law of Succession Cap 169.
 2. Suit is time barred, it offends the provisions of Limitations of Actions Act Cap 22.
 3. The suit is *res-judicata*.
3. The Court on 13/4/2023 directed the parties to canvass the Preliminary Objection by way of written submissions and both parties filed their submissions.
4. In support of the Preliminary Objection the Defendant submitted that the Plaintiff lacked Locus standi to act as the legal representative or administrator of the estate of Njagi Thika since under Embu CM Succession Cause No. 114 of 1983 one Lazarous Warui Frengi was appointed as administrator of the deceased estate and such appointment has never been revoked. The Defendant contended that appeals to the High Court vide Nairobi HC Civil Appeal No. 118 of 1989 and Court of Appeal No. 164 of 1989 against the decision of the CM's Succession Court were respectively dismissed. The Defendant averred that the Administrator and heir of the estate of Njagi Thika (deceased) sold a portion of the land to her late husband Mr. Rugaita and the grant was confirmed showing Rugaita(deceased) was a beneficiary of the deceased estate and in that regard the land was transmitted lawfully to her said late husband. The Defendant stated the Plaintiff had failed to make material disclosures while filing the suit which rendered the suit unsustainable.
5. The Defendant submitted that the Plaintiff failed to make disclosure that a full grant had been issued in respect of the estate of Njagi Thika (deceased) and consequently misled the Chief Magistrate's Court to issue a Limited Grant ad Litem to the Plaintiff in regard to the same estate. The Defendant submitted the Plaintiff's claim being a claim for recovery of land is statute barred on account of limitation of time by virtue of Section 7 of the Limitation of Actions Act, Cap 22 Laws of Kenya. The Defendant contended that there was no legal provision pursuant to which time could be extended to institute a suit that had become time barred under Section 7 of the Limitation of Actions Act. Besides the Defendant argued the Defendant had not brought any action against Lazarous Warui Frengi to whom the suit land was transmitted on 20th July 1994 as the Administrator and beneficiary of the deceased estate. The Defendant placed reliance on the Case of Eunice Nduta & Another v Lilian Chemutai & 2 others (2021) eKLR.
6. The Defendant further submitted that the issue of who the rightful Administrator of the estate of Njagi Thika (deceased) having been determined in Embu Succession Cause No. 114 of 1983 and the Appeals therefrom to the High Court and Court of Appeal having been dismissed the matter is res judicata and cannot be relitigated before this Court.
7. The Plaintiff in his submissions argued that he had the locus standi to institute the suit as he had been issued with grant of Letters of Administration ad litem for the estate of Njagi Thika Thairu (deceased) in Kerugoya CM's Succession Cause No. E069 of 2021 dated 18/2/2021 exhibited in the Plaintiff's bundle of documents dated 13/7/2021 as item No. 5. The Plaintiff stated he was a Nephew to the deceased and hence had a capacity to bring the suit on behalf of the deceased estate, he having died without leaving a wife or any children.



8. On whether or not the suit was time barred, the Plaintiff submitted that he obtained leave to institute the suit vide Kerugoya CMs Misc. Application No. E023 of 2021 on 14/6/2021 exhibited as item 6 in the Plaintiff's bundle of documents dated 13/7/2021. The Plaintiff contended that the leave granted was never set aside and hence the suit was properly instituted.
9. On the question whether the suit was resjudicata the Plaintiff submitted that the Defendant has not availed any material before the Court to enable the Court to determine whether or not the instant suit was res judicata. The Plaintiff submitted that no proceedings, pleadings or Judgment was availed to affirm whether the issues in question in the earlier suits were the same as in the present suit and were finally determined by a Court of competent jurisdiction. The Plaintiff prayed that the Preliminary Objection be dismissed as it lacked any merit.
10. The Preliminary Objection taken by the Defendant raises points of law whether the Plaintiff has the locus standi to bring the suit; whether the suit is statute barred by limitations; and whether the suit is res judicata. These are pure issues of law and I am in the premises satisfied that the Preliminary Objection satisfied the threshold of what qualifies to be raised as a Preliminary Objection. See the Case of *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696.
11. On the issue whether the Plaintiff had the capacity to institute the suit, the Defendant has submitted that he did not, as an Administrator of the estate of Njagi Thika (deceased) had long been appointed vide Embu CM's Succession Cause No. 114 of 1983 where one Lazarous Warui Frengi was appointed as Administrator and in that capacity dealt with the deceased estate including the distribution of land parcel LR No. Mwea/Tebere/275 and the resultant subdivisions which are the subject of the instant suit. The Plaintiff in the pleadings under paragraphs 6,7,8 and 9 of the Plaint admits there was a succession cause vide Embu CM's Succession Cause No. 114 of 1983 and an Administrator for the estate of Njagi Thika Thairu (deceased) was appointed. The Plaintiff stated that his father Kuira Thika was the initial Administrator of the estate but was replaced in what he claimed were unclear circumstances with one Lazarous Warui Frengi at the instance of the Defendant's late husband who was the Advocate having the conduct of the succession cause. Neither the Plaintiff or the Defendant made available the decision in the said succession cause or the decision of the appeals emanating therefrom. However, it is clear and evident that there was indeed a succession cause initiated at Embu Magistrates Court in regard to the estate of Njagi Thika Thairu (deceased) who died on 22/2/1979. The Plaintiff has exhibited a copy of the Kenya Gazette Notice dated 23rd December 1983 where Succession Cause No. 114 of 1983 was advertised showing one Kiura Thika had petitioned for a grant of Letters of Administration to the estate of the late Njagi Thika Thairu who died on 22nd February 1979.
12. The abstract of title (green card for land parcel number Mwea/Tebere/B/275 which together with the resultant subdivisions is the subject matter of the present suit shows that Njagi Thika (deceased) was registered as owner on 19/1/1978. Under Entry No. 1 on 30/4/1986 Lazarus Warui Frengi registered a caution over the title as licensee. On 20/7/1994 the caution registered was withdrawn and Lazarous Warui Frengi was registered as proprietor by way of transmission pursuant to Succession Cause No. 114 of 1983 (form RL 19 of *Registered Land Act*) under the provision of the *Registered Land Act*, Cap 300 Laws of Kenya (repealed). The said Lazarous Warui Frengi therefore having obtained a Grant of Letters of Administration was registered as proprietor of the land in place of the deceased who hitherto was the registered owner. On 23/3/1995 apparently upon confirmation of the grant the suit land was registered in the joint names of Lazarous Warui Frengi (7) acres and Eliud Rugaita Murango (15) acres and a title deed issued.
13. The Plaintiffs further filed an appeal (Civil Appeal No. 164 of 1989) pursuant to which he registered a caution over the suit land. The caution was however lifted on 16/2/2001 and Eliud Rugaita Murango



and Jacinta Wairimu Rugaita were registered as joint proprietors of the suit land and issued title on 15/3/2001 and subsequently subdivided the land which gave rise to the subdivisions that are now the subject in the present suit.

14. I have made extensive reference to the green card exhibited by the Plaintiff because it carries the history of the land the subject of this litigation. Both the Plaintiff and the Defendant admit that there was an earlier succession cause in regard to the estate of the late Njagi Thika Thairu (deceased) where an Administrator was appointed. Though it was the Plaintiff's father Kuira Thika who had petitioned for grant of Letters of Administration in Embu CM's Succession Cause No. 114 of 1983, the Letters were issued to one Lazarous Warui Frengi who must have objected to the appointment of the Plaintiff's father as Administrator. Having been appointed Administrator of the estate, the said Lazarous Warui Frengi had the suit property transmitted to himself as such Administrator as evidenced in the green card before ultimately transferring the same out to the Defendant and her late husband.
15. The appointment of Lazarous Warui Frengi as Administrator of the deceased estate was not challenged and if it was, the appeal was not successful. The appointment has consequently not been revoked and remains valid. It is not apparent whether the Plaintiff made this disclosure before the Subordinate Court when he applied to be issued with Letters of Administration *ad litem*. If he had made such disclosure, the Subordinate Court could not have issued the *ad litem* letters to him as such *ad litem* letters can and are only issued where no grant of Letters of Administration have been issued to any person in respect of a deceased estate. In the present matter a Grant of Letters of Administration had been issued and there cannot be two sets of Letters of Administration in respect of the same deceased estate.
16. In case the Plaintiff had any issue with the issuance of the grant of Letters of Administration to the deceased estate to Lazarous Warui Frengi, the appropriate action to have taken was to apply for the revocation of the grant for whatever reasons that he had but not to apply for a fresh Grant of Letters of Administration. Such application could only have been made before the Court that had issued the grant. Without any doubt the *grant ad litem* issued in Kerugoya CM's Succession Cause No. E069 of 2021 in the matter of the Estate of Njagi Thika Thairu (deceased) on 18th February 2021 was issued without any jurisdiction and were null and void and of no legal effect.
17. I am in the premises persuaded that the Plaintiff had no *locus standi* to bring the present action on behalf of the estate of Njagi Thika Thairu (deceased) as he was not an Administrator of the estate. Having reached the conclusion that the Plaintiff lacked the capacity to institute the present suit, I need not consider the other grounds urged in support of the Preliminary Objection. I accordingly uphold the Preliminary objection on the ground that the Plaintiff had no *locus standi* to bring the present action. The suit is incompetent and is ordered struck out in its entirety.
18. I order that each party bears their own costs of the suit.

RULING DATED SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 15TH DAY OF FEBRUARY 2024.

J. M. MUTUNGI

ELC JUDGE

