



REPUBLIC OF KENYA



Muriu (Suing as a representative of the Estate of John Muriu Kamiri - Deceased) v Muriu & 2 others (Land Case 114 of 2023) [2025] KEELC 736 (KLR) (20 February 2025) (Judgment)

Neutral citation: [2025] KEELC 736 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
LAND CASE 114 OF 2023
YM ANGIMA, J
FEBRUARY 20, 2025**

BETWEEN

LUCY MURINGE MURIU (SUING AS A REPRESENTATIVE OF THE ESTATE OF JOHN MURIU KAMIRI - DECEASED) APPLICANT

AND

ZIPPORAH NYAWIRA MURIU 1ST DEFENDANT

FRANCIS KAMAU MURIU 2ND DEFENDANT

DISTRICT LAND REGISTRAR NYANDARUA 3RD DEFENDANT

JUDGMENT

A. Plaintiff's claim

1. By a plaint dated 16th April 2019 the Plaintiff sued the Defendants seeking the following reliefs: -
 - a. A declaration that the transfer and registration of the Title No. Nyandarua/Ol Kalou Salient/63 from the deceased's name to the 1st and 2nd Defendants' joint name was fraudulent and irregular thus void ab initio.
 - b. Cancellation of the Title No. Nyandarua/Ol Kalou Salient/63 issued in the 1st and 2nd Defendants' name and the 3rd Defendant does revoke its entry and rectify the register by inserting the name of the deceased.
 - c. A permanent injunction restraining the 1st and 2nd Defendants either by themselves, their agents, servants or employees from selling, leasing out or in any other manner, from interfering with the subject property.
 - d. Costs of the suit.



2. The Plaintiff pleaded that at all material times Title No. Nyandurua/Ol Kalou Saliend/63 (the suit property) was matrimonial property which belonged to the estate of her deceased husband John Muriu Kamiri (the deceased). It was further pleaded that the suit property was fraudulently transferred by the deceased to the 1st and 2nd Defendants who were her children during the pendency of a divorce cause she had filed against the deceased. It was her case that the sole intention of the deceased was to “disinherit” her of her rightful share in the suit property.

B. Defendants’ response

3. The 1st Defendant filed a statement of defence dated 20.6.2019 denying liability for the Plaintiff’s claim. She denied that the suit property was matrimonial property or that it belonged to the estate of the deceased. She further denied that the suit property was fraudulently transferred by the deceased and pleaded that it was lawfully bequeathed to her by the deceased during his lifetime.
4. It was the 1st Defendant’s case that when the Plaintiff filed her matrimonial property claim against the deceased in 2014 she excluded the suit property from the case hence she was fully aware that it was not part of matrimonial property. The 1st Defendant further pleaded that the Plaintiff had failed to demonstrate that she had made any contribution towards acquisition of the suit property. As a result, she prayed for dismissal of the Plaintiff’s suit with costs.
5. There is, however, no evidence on record to demonstrate that the 2nd and 3rd Defendants ever filed any defences to the action.

C. Trial of the action

6. At the trial hereof, the Plaintiff testified on her own behalf as the sole witness. She adopted the contents of her witness statement dated 16.04.2019 as her evidence in chief and produced the documents in her list and further list of documents as exhibits.
7. The 1st Defendant also testified on her own behalf as the sole witness. She adopted the contents of her witness statement dated 18.12.2019 and replying affidavit dated 20.06.2019 as her evidence in-chief.
8. Although the 2nd Defendant did not file any defence to the action, he testified at the trial in support of the Plaintiff’s claim. It was his evidence that the deceased had transferred the suit property due to domestic and financial problems hence he did not wish to keep the land. He wanted the land to be given to his mother so that she may deal with it as she may deem fit.

D. Issues for determination

9. The court has noted that the parties did not file any agreed statement of issues for determination. As such, the court shall frame the issues for determination as provided for under Order 15 Rule 2 of the Civil Procedure Rules. Under the said rule, the court may frame issues from any of the following: -
 - a. the allegations contained in the pleadings or answers to interrogatories.
 - b. the allegations contained in statements sworn by or on behalf the parties.
 - c. the contents of documents produced by the parties.
10. The court has perused the pleadings, evidence and documents in this matter. The court is of the view that the following are the main issues for determination in the suit:
 - a. Whether the Plaintiff has proved her claim against the Defendants to the required standard.



- b. Whether the Plaintiff is entitled to the reliefs sought in the suit.
- c. Who shall bear costs of the suit.

E. Analysis and determination

Whether the Plaintiff has proved her claim against the Defendants to the required standard

11. The court has considered the material and submissions on record on this issue. The Plaintiff's claim was based on two main grounds. First, that the suit property was part of matrimonial property hence she was entitled to a share thereof. Second, that the suit property was fraudulently transferred to the 1st and 2nd Defendants by the deceased. Although the 2nd Defendant supported the Plaintiff's claim the 1st Defendant disputed the same. In particular, she contended that there was no evidence of the Plaintiff's contribution towards its acquisition and that there was no evidence of fraud during its transfer.
12. The court has noted from the material and evidence on record that there is no credible evidence to demonstrate that the suit property was ever matrimonial property within the meaning of the law. There was no evidence of what contribution, if any, that the Plaintiff made towards its acquisition. There was no evidence to demonstrate the proportion or percentage of her contribution, if any.
13. Moreover, the evidence on record shows that when the Plaintiff filed her claim for her share of matrimonial property in 2014 she did not include the suit property in the list she presented before the High Court at Nakuru. This is the strongest indication that as far back as 2014 the Plaintiff herself did not believe that the suit property was matrimonial property. The court believes the evidence of the 1st Defendant that the suit property belonged to the deceased and that he voluntarily gifted her and the 2nd Defendant the same.
14. The court further finds no evidence of fraud on the part of the deceased in the transfer of the suit property. The 2nd Defendant, who was a son of the deceased, testified that the deceased transferred the suit property due to some domestic and financial problems. He did not attribute any fraud to the deceased. The court has further noted that even though the Plaintiff attributed some fraud to the deceased, he did not join his personal representative as a defendant to the suit to enable him respond to the allegations and particulars of fraud. As a consequence, the court finds that no fraud has been proved against the deceased to which the 1st Defendant was privy.

Whether the Plaintiff is entitled to the reliefs sought in the suit

15. The court has already found and held that the Plaintiff has failed to prove her claim to the required standard. The court has found and held that the Plaintiff has failed to prove that the suit property was matrimonial property. The court has also found that she has failed to prove the fraud alleged against the deceased. It would thus follow that the Plaintiff is not entitled to the reliefs sought or any one of them. However, the 2nd Defendant is at liberty to surrender his share of the suit property to the Plaintiff at his own cost and convenience.

Who shall bear costs of the suit

16. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons -vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court has noted from the proceedings that the Plaintiff and the 1st and 2nd Defendants



are close relatives. The Plaintiff is their biological mother. The court is of the opinion that each party should bear his own costs of the suit. There shall be no order as to costs regarding the 3rd Defendant since he did not participate in the proceedings.

F. Conclusion and disposal order

17. The upshot of the foregoing is that the court finds and holds that the Plaintiff has failed to prove her claim against the Defendants to the required standard. As a consequence, the court makes the following orders for disposal of the suit;

- a. The Plaintiff's suit against the 1st and 2nd Defendants is hereby dismissed with each party bearing his own costs.
- b. The Plaintiff's suit against the 3rd Defendant is hereby dismissed with no order as to costs.

It so decided.

JUDGMENT DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY ON THIS 20TH DAY OF FEBRUARY 2025.

Y. M. ANGIMA

JUDGE

In the presence of:

Ms. Otokoma holding brief for Mr. Kairu Maina for the Plaintiff.

Mr. Munene Chege for the 1st Defendant

No appearance for the 2nd Defendant

No appearance for the 3rd Defendant

