



**Kiambati (Suing on His Behalf and the Estate of Salome Wangui Kiambati Deceased) v Mangare (Suing on Behalf of the Estate of Stephen Karanja - Deceased) & another (Environment and Land Appeal E072 of 2022) [2024] KEELC 5653 (KLR) (30 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5653 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E072 OF 2022**

**JG KEMEI, J**

**JULY 30, 2024**

**BETWEEN**

**JAMES KIAMBATI (SUING ON HIS BEHALF AND THE ESTATE OF SALOME WANGUI KIAMBATI DECEASED) ..... APPELLANT**

**AND**

**SALOME WANJIKU MANGARE (SUING ON BEHALF OF THE ESTATE OF STEPHEN KARANJAN - DECEASED) ..... 1<sup>ST</sup> RESPONDENT**

**JONATHAN KIAMBATI MBARIA (SUED ON HIS OWN BEHALF AND AS THE ADMINISTRATOR OF THE ESTATE OF DORIS WANJIRU - DECEASED) ..... 2<sup>ND</sup> RESPONDENT**

*(An Appeal from the Judgment of Hon J N Nthuku (PM) in CMCC No 353 of 2018 - Limuru delivered on the 27/7/2022)*

**JUDGMENT**

1. The Appellant and the 1<sup>st</sup> Respondent on appeal were the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs in the trial Court while the 2<sup>nd</sup> Respondent was the Defendant therein.
2. Vide an amended Plaint dated the 21/9/2017 the Appellant and the 1<sup>st</sup> Respondent filed suit against the 2<sup>nd</sup> Respondent seeking orders for damages in the sum of Kshs 633,600/- along with general damages for forceful eviction and costs of the suit. It was their case that they have occupied parcel No Limuru/Kamirithu/380 (suit land) for over 40 years and yet on the 30/8/95 the 1<sup>st</sup> Respondent in the company of others wrongfully and unlawfully demolished 3 houses belonging to the Plaintiffs without their consent, occasioning them loss and damage in the sum of Kshs 633,600/- hence the suit.



3. Vide the Statement of Defence dated the 16/12/2017, the 2<sup>nd</sup> Respondent denied the claim of the Plaintiffs and contended that the eviction having been executed vide a Court order issued on the 13/3/95, the same was lawful. That in any event the Plaintiffs' attempt to set aside the said orders was dismissed by the Court. He denied that the Plaintiffs suffered any loss and damage.
4. Upon hearing the case, the trial Court rendered its Judgment on the 27/7/2022 dismissing the suit on grounds that the Plaintiffs failed to prove that the 2<sup>nd</sup> Respondent participated in the eviction exercise to the detriment of the Plaintiffs.
5. Aggrieved by the said Judgment of the Court, the Appellant has moved this Court on appeal on the following grounds that the Learned trial Magistrate erred in law and fact;
  - a. By finding that the 2<sup>nd</sup> Respondent was not an administrator whereas the 2<sup>nd</sup> Respondent was sued in his capacity in the primary suit.
  - b. By failing to find that the 2<sup>nd</sup> Respondent was leading the demolition with his deceased mother whereas there was adequate evidence to support that fact produced by the Appellant
  - c. Failing to appreciate that the 2<sup>nd</sup> Respondent was a beneficiary of the suit premises and was involved in the succession cause for the estate of the deceased father who was the registered owner of the property and therefore had interest in the eviction of the Appellant from the suit premises before arriving to the wrong finding.
  - d. Failing to find that the Appellant had produced corroborative pictorial evidence to put the 2<sup>nd</sup> Respondent at the scene of demolition therefore arriving at the wrong finding.
  - e. In finding that the 2<sup>nd</sup> Respondent had not specifically pleaded in his defence that he was not present during the demolition and therefore arrived at the wrong finding
  - f. Finding that the 2<sup>nd</sup> Respondent did not cause the demolition of the Appellants property whereas the 2<sup>nd</sup> Respondent was part of a group that demolished the Appellants property
  - g. By using the wrong legal principles to determine the suit hence arriving at the wrong finding
  - h. Failing to assess special damages payable to the Plaintiff should the Appellants suit have been successful therefore ended up arriving at the wrong finding.
  - i. By failing to evaluate the totality of the evidence in a judicial manner therefore arriving at the wrong Judgment.
6. Consequently the Appellant sought the following orders on appeal;
  - a. That the appeal be allowed.
  - b. That the Judgment of the lower Court dated the 27/7/22 be set aside.
  - c. Costs of the appeal.
7. Parties elected to canvass the appeal by way of written submissions which I have read and considered.
8. Counsel for the Appellant gave a lengthy litigation history of the suit land that has bedeviled it for the last 2 decades. Three issues were framed by the Appellant as follows; whether the trial Court was correct in finding that the Defendant was not a proper party in the proceedings; whether the Court evaluated the evidence judiciously before arriving at its findings; whether the Court was correct in finding that there was no corroborative evidence to hold the Respondent liable for eviction of the Appellant from the suit land.



9. Was the Defendant a proper party to the suit? The Appellant answered this in the affirmative on the grounds that; the 2<sup>nd</sup> Respondent was sued as the 2<sup>nd</sup> Defendant initially and appeared throughout in his personal capacity; in the amended plaint he remained a party on his own behalf and as an administrator of the estate of his mother; the 2<sup>nd</sup> Respondent admitted the description of the parties in his defence and during the entire proceedings did not raise any issue on incapacity at all, least of all in his defence; there is an express admission that no grant has been issued in respect to his deceased mother's estate. In addition, Counsel for the Appellant submitted that the issue of locus of the parties was a none issue and yet it clogged the mind of the Court hence arriving at the wrong decision. That the Respondent admitted in his pleadings that he was an administrator of the estate of his deceased mother and therefore was estopped from denying that fact. That in any event the 2<sup>nd</sup> Respondent never at any time raise the issue of locus in his pleadings and since parties are bound by their pleadings the Court erred in determining an unpleaded issue.
10. Did the 2<sup>nd</sup> Respondent and his deceased mother damage the Appellants' properties? The Court was faulted in its decision that the 2<sup>nd</sup> Respondent was not a party to the demolition which the Court held was undertaken by the 2<sup>nd</sup> Respondent's mother pursuant to a Court order. That the evidence and the pleadings filed in Court demonstrate that the eviction was carried out unlawfully since the evictee named in the said orders was not the Appellant. Further the evidence produced by the Appellant in form of pictorials and newspaper cuttings demonstrated that the 2<sup>nd</sup> Respondent was present during the eviction. That in the decision of the Court in HCCC No 2797 of 1995, the Court found that it was the Defendant's wish to remove the Appellant from the land, which decision has never been challenged by the 2<sup>nd</sup> Respondent despite that he was a party (the 3<sup>rd</sup> Defendant) in the suit. That the 2<sup>nd</sup> Respondent admitted that he participated in the eviction during cross examination on page 86 of the Record of Appeal when he stated that he executed the eviction in 1985.
11. It was further submitted that the 2<sup>nd</sup> Respondent stood to benefit from the eviction of the Appellant using orders directed to a third party.
12. Did the Appellant proof that the 2<sup>nd</sup> Respondent was liable for the eviction of the Appellant from the suit property? The Appellant answered this in the affirmative going by the evidence produced to show that the 2<sup>nd</sup> Respondent was present during the demolition. The Court was also faulted in failing to assess damages in favour of the Appellant.
13. On the issue of *locus standi* on the part of the Appellant to file suit, the 2<sup>nd</sup> Respondent submitted that the Plaintiffs lacked grant of letters of administration in the estates that they purport to represent. That in the absence of any locus, the Plaintiffs did not suffer any loss and or damage as alleged. That the 2<sup>nd</sup> Respondent stated that the Letters of Administration on pages 20 and 22 of the Record of Appeal ought to be disregarded because they were filed without the leave of the Court and secondly, they did not form part of the Plaintiffs List of Documents. That on page 78 of the Record of Appeal, the Appellants Counsel informed the Court that the letters of administration had been revoked.
14. Whilst reiterating the importance of locus in a suit, the 2<sup>nd</sup> Respondent relied on the cases of *Alfred Njau & others v City Council of Nairobi* (1982-88) 1KAR and *Kipngetich Kalya Kones (suing as the administrator of the estate of Kipkalya Kiprono Kones, deceased v Wilson Kiplangat Kones* (2022) eKLR where the Court held that *locus standi* is a primary point of law almost similar to that of jurisdiction since the lack of capacity to sue or be sued renders the suit incompetent.
15. It was further submitted that the eviction was carried out pursuant to a Court order in a case where the 2<sup>nd</sup> Respondent was not a party nor had authority or power to execute or cause the execution of the Court orders. Secondly that the estate of the late Doris in whose favour the eviction orders were



issued has not been succeeded and therefore there would be no basis to hold the 2<sup>nd</sup> Respondent liable. That having failed to cite the estate of the said Doris, the 2<sup>nd</sup> Respondent submitted that the cause of action against the estate of Doris abated within one year.

16. As to whether the 2<sup>nd</sup> Respondent participated in the eviction exercise, the 2<sup>nd</sup> Respondent submitted that the Appellant failed to specify the role played by the 2<sup>nd</sup> Respondent in the impugned eviction and that in the absence of cogent corroborating evidence, the burden of proof remains undischarged.
17. Having read and considered the record of appeal, the trial Court record, the rival written submissions together with all the materials placed before the Court the issues that commend themselves for determination are; whether the Appellant had locus to file the suit; whether the 2<sup>nd</sup> Respondent was a proper party to the suit; whether the 2<sup>nd</sup> Respondent was liable for the wrongful eviction of the Appellant; who meets the cost of the appeal.
18. As a first appellate Court, this Court has a duty to examine matters of both law and facts and subject the whole of the evidence to a fresh and exhaustive scrutiny, before drawing a conclusion from that analysis. The Court has however to bear in mind the fact that it did not have an opportunity to see and hear the witnesses first hand. This duty is enunciated by Section 78 of the *Civil Procedure Act* which espouses the role of a first appellate Court which is to: ‘... re-evaluate, reassess and re-analyze the extracts of the record and draw its own conclusions.’
19. Besides, that duty has been affirmed in numerous decisions of the superior Courts. Notably in the case of *Selle & another v Associated Motor Boat Co. Ltd & others* [1968] EA 123, this principle was pronounced thus:

“... this Court is not bound necessarily to accept the findings of fact by the Court below. An appeal to this Court ... is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect ...”
20. Bearing the above principles in mind the Court shall now embark on the assessment of the appeal noting that this Court did not see or interact with the witnesses before the trial Court.
21. By way of background the parties in this case are second generation litigants, their parents having litigated this suit in their prime age as early as 1983. The suit land and I guess the occupants, have not known peace since then, having been in the corridors of justice for the last 41 long years.
22. Once upon a time there lived a family patriarch namely Jonathan Mbari Kiambati who had sired 8 children but of relevance to this suit, the focus are on three of his children namely Salome Wangui Kiambati(Wangui) , Stephen Karanja (Stephen) and Joseph Mbaria Kiambati (Joseph), all whom are deceased.
23. According to what can be gleaned from the record is that the suit land was registered in the name of one of the siblings namely Stephen Karanja in 1961.
24. It is not disputed that at some point the three siblings lived on the suit land. All was well until Joseph died on 8/1/1983. His estate was succeeded vide a confirmation of grant of letters of administration issued on 1/4/1985 where his wife Doris Wanjiru and son Peter Richard Karanja were appointed as legal representatives in HCCC No 375 of 1983. According to the confirmation of grant aforesaid, the



- suit land devolved to Jonathan (the 2<sup>nd</sup> Respondent), David Chege Peter Richard Karanja and Emily Wanjiru as at 1/4/1985.
25. The title of the suit land became registered in the name of the administrators to hold in trust for themselves and 3 others. See title issued on the 24/1/1986.
  26. It would appear that upon succeeding her husband Doris Wanjiru moved the Court vide a Notice of Motion dated the 5/3/1986 and sought orders to evict one Serah Wambui Mondo from the suit land. It was stated that Serah Mondo claimed to have been married to Joseph in 1974, a claim that was not proven. It suffices to state that for purposes of this suit that she was in occupation of a portion of the suit land. Doris succeeded and obtained eviction orders issued on the 13/3/1986.
  27. Alarmed with the eviction orders, Serah Wambui Mondo Mbaria returned to Court vide a Chamber Summons dated the 23/4/1986 and sought for stay of the eviction orders, revocation of letters of grant of administration issued to Doris in 1983 in the estate of Joseph and that she be appointed co – administrator of the estate of Joseph. The application was supported by the Appellant vide his Supporting Affidavit sworn on the 23/4/86. In the said affidavit the Appellant stated that he was the son of Wangui whose interest in the suit land was of customary nature. Serah suffered defeat when the application was dismissed on the 1/2/1995.
  28. The objection having been dismissed on 1/2/1995, Doris executed the eviction orders in earnest on the 30/8/95.
  29. Following the eviction, Wangui and her three sons, the Appellant included headed to Court and filed the suit vide HCCC No 2797 of 1995 (OS) –(Salaome Wangui Kiambati, James Kiambati , Joseph Mbaria and Stephen Karanja v Doris Wanjiru, Peter Richard Karanja, Jonathan Kiambati and Mercy Emily Wanjiru) against Doris and her 3 children claiming 4 acres of land by way of customary trust out of the suit land.
  30. Three years later in 1998 whilst the previous suit HCCC No 2797 of 1995 was pending in the same Court, Wangui and her sons again filed suit against Doris and her son, the 2<sup>nd</sup> Respondent vide HCCC No 479 of 1998 – (Salome Wangui Kiambati, James Kiambati and Stephen Kiambati v Doris Wangui & Jonathan Kiambati Mbaria) seeking for orders of special damages in the sum of Kshs 633,600/- and general damages for wrongful eviction.
  31. As fate would have it Doris Wangui perished in a road accident along Kimathi Street – Nairobi on the 14/6/2000.
  32. Justice Ransley (as he then was) entered Judgement in HCCC No 2797 of 1995 in favour of Wangui on the 17/2/2006 granting her request for title over 4 acres of the suit land in the following terms;

“ That the four acres of the land known as Limuru/Kamirithu/380 which she occupies be surveyed at her expense and that she be registered as having a life interest in the same and that on her death her sons shall inherit the said piece of land absolutely.”
  33. On the 28/4/2006 as fate would have it Salome Wangui, the mother of the Appellant died and the the Letters of Administration were issued in the name of the Appellant and Joseph Mbaria Kiambati on the 22/4/2010.
  34. Stephen Karanja also died on the 26/7/2006 and Jane Wanjiku Mangara was appointed legal administrator of his estate.



35. With the establishment of the Environment and Land Courts, Nairobi HCCC No 479 of 1998 was transferred to the Environment and Land Court and renamed ELC No 892 of 2015. The parties remained the same except that vide a Ruling rendered on the 31/5/2017 Justice Obaga allowed the 2<sup>nd</sup> Respondent to substitute the deceased with the 1<sup>st</sup> and the 2<sup>nd</sup> Plaintiffs. It is noteworthy that though by this time Doris is long dead in 2006, she was not substituted.
36. The record shows that on the 6/12/2018 this suit was transferred to the trial Court and renamed as CMCC No 353 of 2018, the Judgement therein being the subject of this appeal.
37. The case of the Appellant in the trial Court is that the eviction of her mother Wangui was wrongful as the Court orders only targeted Serah Mondo, a third party as a result of which the Plaintiffs suffered loss and damage.
38. The 2<sup>nd</sup> Respondent's defence was that the eviction was pursuant to Court orders; the Plaintiffs had no interest in the land; he was wrongly sued in the absence of letters of grant of administration in the estate of his late mother Doris; he was not a party in the suit in which the eviction orders were issued.

### **Locus standi**

39. Locus standi loosely put is the right of a party to mount a suit in Court. It is the right to be heard. In the case of *Troustik Union International & another v Jane Mbeyu & another* CA 145 of 1990 the Court held that where a party seeks to file a suit on behalf of the estate of a deceased person he must of necessity obtain letters of administration before filing the suit.
40. In this case the Appellant filed suit on his behalf and that of his mother Salome Wangui Kiambati while the 1<sup>st</sup> Respondent filed suit as the 2<sup>nd</sup> Plaintiff on behalf of the estate of Stephen Karanja deceased. In its Judgement the Court found that in the absence of letters of representation having been presented by the Plaintiff in the trial Court, the suits on behalf of the estates of the deceased persons were dismissed. I find that this question had been determined by the Court in its Ruling on the 31/5/17 in which the applicants presented the copies of grants in the estate of Salome Wangui granted to the Appellant and his brother Joseph Mbaria Kiambati on 22/4/2010. While the grant in the estate of Stephen Karanja Kiambati was issued on the 8/11/2007 in the name of Jane Wanjiru Mangara and Salome Wanjiku Mangara. I find that the Plaintiffs in the trial Court were properly before the Court. In any event the issue of locus was never challenged by the Respondents as this had been canvassed by the parties in the previous proceedings culminating into the Ruling of 31/5/17. I therefore find that Court erred in holding that the suits and by extension the claims of the estates of the deceased persons are a nullity in the face of evidence to the contrary. Both parties have capacity to sue in the presence of the letters of grants of administration of the deceased persons.
41. It is not in dispute that Doris passed away on the 14/6/2000 and there is no evidence that the estate has been succeeded. I concur with the 2<sup>nd</sup> Respondent and the trial Court that the estate of Doris has not been succeeded and that the 2<sup>nd</sup> Respondent could not have been sued as such. He was however sued in his personal capacity as well and the question is whether the Appellant proved his case against the 2<sup>nd</sup> Respondent.
42. Before I deal with the above issue, the Court notes that the eviction orders targeted one Serah Mondo Mbaria and not the Plaintiffs. It was not in dispute that the Plaintiffs resided on the suit land together with Serah Mondo. The Court finds that the eviction of the Plaintiffs pursuant to the orders issued on the 13/3/1986 was not only wrongful but without any legal and justifiable cause whatsoever.



43. The Appellant presented evidence in form of a valuation report dated the 11/10/1995, about 2 months after the demolition of the Appellants houses in which the special damages of Kshs 692,000/- was arrived at for the reinstatement of three houses, one pigsty and other structures and furniture and incidentals. This evidence was not challenged by the 2<sup>nd</sup> Respondent and therefore the same is taken as believable.
44. The next question is whether the Appellant proved that the 2<sup>nd</sup> Respondent carried out the demolitions. The Appellant led evidence that the 2<sup>nd</sup> Respondent and his deceased mother with the help of goons descended on their houses without any notice and demolished them to the ground. That the demolition was without any legal basis since the orders they relied on were targeted against one Serah Mondo who was in occupation of part of the premises. Several pictures were presented before the trial Court showing people demolishing the houses while others standing and watching. The Appellant led evidence that the police from the local police station supervised the demolition.
45. The 2<sup>nd</sup> Appellant in response stated that the eviction and the demolition was lawful having been carried out in compliance with a Court order. That the Appellant and the 1<sup>st</sup> Respondent had no interest in the suit land and therefore they cannot be heard to complain against the eviction. This Court has already found out the eviction was wrongful and unlawful.
46. During the trial, the Appellant led evidence that the 2<sup>nd</sup> Respondent was present with his mother. In cross examination the 2<sup>nd</sup> Respondent stated that he cannot recall whether he was present during the eviction. However in his own reexamination, the 2<sup>nd</sup> Respondent informed the Court as follows;
- “The eviction was out of a Court order. We executed the eviction in 1995”
47. The import of the above evidence was that the 2<sup>nd</sup> Respondent was admitting that he was involved with the eviction and together with the hired young men and his mother with the supervision of the police evicted the Plaintiffs without any basis in law. The other meaning is that even if he was not present, he approved the demolition. His argument that in any event the Plaintiffs had no interest in the land was weighty and telling given that by this time the 2<sup>nd</sup> Respondent had been allocated the suit land vide the confirmation of grant dated the 1/4/1985 culminating into a title issued on the 24/1/1986. It suffices to state that by this time the 2<sup>nd</sup> Respondent was a co-owner of the suit property and therefore was in his interest to evict the Plaintiffs so that he takes over the land. I find that the 2<sup>nd</sup> Respondent admitted carrying out the eviction and demolition of the houses of the Appellant.
48. On the question of assessment of general damages, the Court has taken into consideration that the Appellant was evicted without any basis in law and that their houses were demolished in an arbitrary manner. Evidence was led that the Appellant rebuilt the houses on the suit land thereafter. In the circumstances therefore, the Court awards the Kshs 350,000/- as general damages. The special damages in the sum of Kshs 633,000/- is not challenged and the same having been proved in evidence it is hereby allowed.
49. In the end, I find the appeal is merited. It is allowed in the following terms;
- a. That the appeal be and is hereby allowed.
  - b. That the Judgment of the lower Court dated the 27/7/22 be set aside and Judgement is entered as prayed the plaint.
  - c. Special damages in the sum of Kshs 633,000/- is allowed.
  - d. General damages in the sum of Kshs 350,000/- is awarded.



e. Costs of the suit in the trial Court and on appeal is in favour of the Appellant.

50. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 30<sup>TH</sup> DAY OF JULY 2024  
VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered online in the presence of;

Ms. Mwikali HB Mr. Kivuva for Appellant

Mr. Njoroge for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Court Assistants – Phyllis/Oliver

