



**Mwangi & 2 others v Karanja (Environment and Land Appeal  
E015 of 2022) [2024] KEELC 5314 (KLR) (17 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5314 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT AND LAND APPEAL E015 OF 2022**

**JM MUTUNGI, J**

**JULY 17, 2024**

**BETWEEN**

**MERODY WAMBUI MWANGI ..... 1<sup>ST</sup> APPELLANT**

**JAMES KARIUKI GITIMU ..... 2<sup>ND</sup> APPELLANT**

**JECINTA NDITI GATIMU (SUING AS THE LEGAL REPRESENTATIVE OF  
THE ESTATE OF GATIMU RUKENYA (DECEASED) ..... 3<sup>RD</sup> APPELLANT**

**AND**

**CYRUS MBITAU KARANJA ..... RESPONDENT**

*(Being an Appeal against the Ruling and subsequent Order of the Hon. S.M. Nyaga, Senior Resident Magistrate sitting in Baricho ELC Case No. 21 of 2021 and dated 14.07.2022)*

**JUDGMENT**

1. This appeal arises from the Ruling of Hon. S.M Nyaga Senior Resident Magistrate delivered on 14<sup>th</sup> July 2022 in Baricho SRMC ELC No. 26 of 2019.
2. The Appellants filed a suit in the Lower Court seeking an order of temporary injunction to restrain the Respondent and/or his agents from interfering with Land parcel Kiine/Kibingoti/Nguguini/1574; a declaration that the transfer and registration of land parcel Kiine/Kibingoti/Nguguini/1574 in the name of the Respondent was irregular, unlawful and fraudulent; and, an order for the cancellation of the title in respect of Land parcel Kiine/Kibingoti/Nguguini/1574 in the name of the Respondent and for it to revert to the name of Gatimu Rukenya (deceased).
3. It was the Appellant's position that in 1987, L.R Kiine/Kibingoti/Nguguini/1026 belonging to Gatimu Rukenya (deceased) was subdivided into Kiine/Kibingoti/Nguguini/1573 and 1574. The Appellants averred that the resultant title L.R Kiine/Kibingoti/Nguguini/1574 was registered in the name of the Respondent. The Appellants further averred that vide the official search they conducted,



they discovered that the deceased lodged a caution over the suit land in 1996. They stated that the registration of the suit land in the name of the Respondent was done fraudulently as the Respondent had been a licensee on the suit land. They averred that they discovered the fraudulent act by the Respondent when he produced a certificate of title of the suit land on 22<sup>nd</sup> February 2021 in the Chief's Office, where they had reported the matter. The Appellants further averred that it was during the second meeting that took place in the Chief's Office on 24<sup>th</sup> May 2021 that the Respondent produced a sale agreement dated 7<sup>th</sup> January 1987. The Appellants stated that the deceased was opposed to the Respondent's occupation of the suit land during his lifetime. It was the Appellants contention that the Respondent forcefully entered the land in the year 2000 and destroyed 650 mature stems of coffee that were in the suit land.

4. The Respondent filed his Statement of Defence in the Lower Court and contended the sale and transfer of the suit land was done lawfully and in compliance with the applicable law. He averred that he immediately took possession of the suit land as soon as the land was transferred to his name and started utilising the same.
5. The Respondent raised a Preliminary Objection and sought to have the entire suit struck out on the grounds that the suit was statute-barred; and, that the Appellants lacked locus standi to institute the suit. The Preliminary Objection was canvassed by way of written submissions.
6. The Learned Trial Magistrate, in his determination, held that the Appellant's claim was statute-barred and that the Appellants lacked locus standi as there was "no evidence that the Plaintiffs secured letters of administration to represent the estate." In consequence, the Learned Trial Magistrate dismissed the suit by the Appellants with costs to the Respondent.
7. The Appellants dissatisfied and aggrieved by the Learned Trial Magistrate's decision has appealed to this Court against the Ruling on fifteen grounds set out in the Memorandum of Appeal. The grounds of appeal can be condensed and summarized as hereunder:-
  1. The Learned Trial Magistrate erred in law and fact by finding that the suit was statute-barred and that the Appellants lacked locus standi.
  2. The Learned Trial Magistrate erred in law and fact by failing to justify the reasons for dismissing the Appellants' suit.
  3. The Learned Trial Magistrate erred in law and fact by failing to consider the application dated 19<sup>th</sup> July 2021, which allowed the Appellant to use the special limited grant, as the Ad litem Grant had not been signed.
  4. The Learned Trial Magistrate misdirected himself by finding that the Appellants discovered the Respondent's fraudulent act in 1996.
  5. The Learned Trial Magistrate erred in law and, in fact, by not deciding the suit on merit.
8. The Appellant sought that the Ruling by the Learned Trial Magistrate and all consequential orders be set aside and the appeal be allowed and the costs be awarded to the Appellants.
9. In order to determine whether or not the decision of the Subordinate Court was justified or not justified, it is necessary that Court reconsiders and re-evaluates the evidence that was adduced before the Subordinate Court. This being a first appeal, the Court is under a duty to relook and re-evaluate the evidence afresh and it is not necessarily bound by any findings of fact that the Court below may have made. The Court can reach its own conclusions if upon evaluation of the evidence, the Court is satisfied the Lower Court applied the wrong principles in reaching the decision that it did and/or if



any finding was not supported by the evidence. This principle was aptly established in the Court of Appeal Case of *Selle & Another –vs- Associated Motor Boat Co Ltd & Others* (1968) EA 123 where the Court stated as follows:-

“--- this Court is not bound necessarily to accept the findings of fact of 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 the 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 ----“

10. The Appeal was canvassed by way of written submissions. The Appellant’s submissions were filed on 6/12/2023 while the Respondent filed his submissions on 8/2/2024.
11. Having reviewed the pleadings, the Appeal record, and the evidence adduced before the Lower Court and further having considered the submissions made by the parties, it is clear the appeal turns on two grounds as follows:-
  1. Whether the Appellants’ suit was statute barred as the Learned Trial Magistrate held.
  2. Whether the Appellants had locus standi to institute the suit on behalf of the estate of Gatimu Rukenya (deceased).
12. The Respondent hinged his Preliminary Objection on the fact that the Appellants’ cause of action was statute barred and that the Appellants lacked locus standi to institute the suit before the Lower Court.
13. Under Clause 10 of the Complaint, the Appellant pleaded as follows:-
  10. The Plaintiffs further draw the attention of the Court to the fact that the deceased lodged a caution in the year 1996. It is evident he was opposed to the fraudulent transfer and land grabbing by the Defendant. He had always, though old and sickly, been opposed to the Defendant’s occupation of the suit land premises and had been at constant loggerheads till his demise, and within that period, Defendant refrained from intermeddling with the land until the year 2000 when he forcefully occupied and destroyed the crops such as 650 mature stems of coffee on the parcel of land.
14. Under prayer (b) of the Complaint the Appellants prayed for a declaration that the transfer of the suit land to the Respondent was irregular, unlawful and fraudulent and therefore null and void abinitio. Under prayer (c) the Appellants sought for an order for the cancellation of the registration of the Respondent as the owner of the suit property and for the title of the land to be reverted back to the name of the original owner Gatimu Rukenya (deceased). It is thus clear the Appellants were seeking to recover the land from the Respondent on behalf of the estate of Gatimu Rukenya (deceased). An action for the recovery of land under the provisions of the *Limitation of Actions Act*, Cap 22 Laws of Kenya has to be instituted within a period of 12 years from the date the cause of action accrued. Section 7 of the Act provides as follows:-
  7. An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.
15. The appellants for their part averred that their suit was founded on fraud which they claimed to have discovered on 25<sup>th</sup> February 2021 when they carried out an official search. This assertion appears to



contradict the Appellants claim that the Respondent forcibly entered the suit land in the year 2000 after the deceased death.

16. Under Section 7 of the *Limitation of Actions Act*, the deceased in lodging a caution against the title of the suit land must have become aware that the Respondent had gotten registered as the owner of the land in 1987 and hence if there had been any fraud, he must have discovered the fraud at the time he lodged the caution and had three (3) years to initiate a claim founded on fraud from the date he registered the caution. The claim by the Appellants flows from the deceased and they therefore are deemed to have become aware of the fraud as from the date their deceased father registered the caution. A claim in the circumstances founded on fraud was clearly statute barred under the provisions of the *Limitation of Actions Act*, Cap 22 Laws of Kenya.
17. Even if the claim was for recovery of land, under the provisions of Section 7 of the Act, it would suffer the same fate. The Appellants have pleaded that the Respondent forcibly entered and occupied the suit land in the year 2000 and there is no indication that he at any time yielded possession to the Appellants. The Appellants instituted the instant suit on 2<sup>nd</sup> June 2021 well outside the period of Limitation. In the Case of Gathoni –vs- Kenya Co-operative Creameries Ltd (1982) eKLR the Court of Appeal pronounced itself on the essence of Limitations of Actions thus:-

“The Law of Limitation of Actions is intended to protect Defendants against unreasonable delay in bringing of suits against them. The statute expects the intending Plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest. Special provision is made for infants and for mentally unsound. But, rightly or wrongly, the Act does not help persons like the Applicant who whether through dilatoriness or ignorance, do not do what the informed citizen would reasonably have done.”

In the present case I am not satisfied the Appellants acted reasonably in waiting for over 20 years after the death of their father to take action particularly when they claim the Respondent forcibly occupied the land in 2000. In the premises it is my view that the Learned Trial Magistrate was justified in holding that the suit was statute barred.

### **Issue of Locus Standi**

18. As concerns the issue whether or not the Appellants had locus standi to institute the suit on behalf of the deceased estate, I do also hold the Learned Trial Magistrate properly found that the Appellants had no locus standi to institute the suit. It is trite law that only a duly appointed legal representative has capacity and authority to represent the estate of a deceased person. A suit in regard to an estate of a deceased person commenced by a person without first obtaining grant of Letters of Administration to act for and on behalf of the deceased estate is a nullity ab initio. In the Case of Isaya Masira Momanyi (suing on behalf of the late Musira Onsase) –vs- Daniel Omwoyo & Another (2017) eKLR this Court sitting at Kisii stated thus:-

“It is trite law that the estate of deceased person can only be represented in any legal proceedings by a person who is duly authorized to do so on behalf of the estate. Only a person who has been issued grant of Letters of Administration has capacity to represent the estate of a deceased person.”

19. The Appellants have argued that they had obtained a special limited grant dated 19<sup>th</sup> July 2021 which regularised the issue of representation of the deceased. I have perused the record of the appeal and the original record of the lower Court and I have not come across any exhibited ad litem grant. What is apparent however from the record is that as at the time the instant suit was filed, the Appellants had



not obtained any grant of Letters of Administration to give them any authority to file the suit on behalf of the estate of Gatimu Rukenya (deceased).

Section 80(2) of the [Law of Succession Act](#), Cap 160 Laws of Kenya makes it clear that a grant takes effect from the date of issue and hence a party cannot institute a suit when he had no capacity and expect to subsequently obtain a grant to regularize his legal capacity in the case of a deceased person. Section 80(2) provides as follows:-

- (2) A grant of letters of administration, with or without the will annexed, shall take effect only as from the date of such grant.

Section 82(a) of the [Law of Succession Act](#) provides as follows:-

82. Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—

- (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;

20. The Appellants clearly had no capacity and/or authority to institute the suit on behalf of the deceased estate having not taken out Letters of Administration. The Trial Magistrate therefore properly held they lacked the locus standi to institute the suit on behalf of the estate of the deceased.

21. In the Case of Julian Adoyo Ongunga & Another —Vs- Francis Kiberenge Bondeva Migori Civil Appeal No. 119 of 2015 (2016) eKLR Mrima J described a party filing a suit without an Ad Litem as follows;

'...Simply put, a party without locus standi in a civil suit lacks the right to institute and/or maintain the suit even where a valid cause of action exists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit locus standi can be equated to that of a court acting without jurisdiction since it all amounts to null and void proceedings. It is worth noting that the issue of locus standi becomes such a serious one where the matter involves the estate of a deceased person since in most cases the estate involves several other beneficiaries or interested parties...'

21. Similarly, Justice Chitembwe in *Hawo Shanko v Mohamed Uta Shanko* [2018] eKLR while addressing the failure to obtain a grant before filing a suit observed thus:

“...The general consensus is that a party lacks the Locus standi to file a suit before obtaining a grant limited for that purpose. This legal position is quite reasonable in that if the Plaintiff or Applicant has not been formally authorized by the Court by way of a grant limited for that purpose, then it will be difficult to control the flow of Court cases by those entitled to benefit from the estate. If each beneficiary is allowed to file a suit touching on a deceased’s estate without first obtaining a limited grant, then several suits will be filed by the beneficiaries. It is the Limited grant that gives the plaintiff the locus to stand before the Court and argue the case. It does not matter whether the suit involves a claim of intermeddling of the estate or the preservation of the same. One has to first obtain a limited grant that will give him/her the authority to file the suit...”.

21. The Court further stated that:-

'...if any relationship with the deceased does exist whether son, daughter, wife, widow is not sufficient. That relationship does not give the locus standi to any relative to obtain suit



before obtaining limited grants. One's relationship to the deceased does not clothe such a party with the locus standi. It is the Limited Grant which does'.

21. I affirm that I fully subscribe to the exposition of the law as expressed by Mrima, J and Chitembwe, J in the above cases and I agree with their observations.
21. Having reviewed and evaluated the evidence presented before the subordinate Court, I am satisfied the Learned Trial Magistrate properly appraised the matter and reached the right decision. I find no basis upon which I could fault the determination he arrived at. The Appeal is devoid of merit and the same is dismissed with costs to the Respondent.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 17<sup>TH</sup> DAY OF JULY 2024.**

**J. M. MUTUNGI**

**ELC - JUDGE**

