



**Wanjohi and Wanjohi (Suing as the Legal representative of the Estate of John Wanjohi Mwaniki - Deceased) & another v Kariuki (Environment & Land Case 137 of 2018) [2024] KEELC 6681 (KLR) (6 August 2024) (Ruling)**

Neutral citation: [2024] KEELC 6681 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 137 OF 2018**

**MD MWANGI, J**

**AUGUST 6, 2024**

**BETWEEN**

**MICHAEL MAINA WANJOHI AND NANCY WANGARI WANJOHI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JOHN WANJOHI MWANIKI - DECEASED) ..... 1<sup>ST</sup> PLAINTIFF**

**PERIS WANJIKU MWEKA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF MAINGI NJIMA - DECEASED) ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**CHARLES KARIUKI ..... DEFENDANT**

**RULING**

(In respect of the Notice of Motion dated 24<sup>th</sup> April, 2024 brought under the provisions of Section 3 of the *ELC Act* and Article 159 of the *Constitution*)

**Background**

1. The application under consideration is the Plaintiffs' Notice of Motion dated 24<sup>th</sup> April, 2024 brought under the provisions of Section 3 of the *Environment and Land Court Act* and Article 159 of the *Constitution*. The Plaintiffs/Applicants pray that the Court be pleased to order the cancellation of the name of Munanu Kariuki (deceased) on the property LR No 26/01/240 (hereinafter referred to as 'the suit property') for the appropriate action of the succession and equitable distribution.
2. In the alternative, the Plaintiffs pray that the Court be pleased to order that the Registrar of Government Lands be directed to dispense with the production of Muguna Kariuki's identification documents while registering the transfer or transmission forms in respect to the suit property.



3. The application is premised on the grounds on the face of it and the annexed affidavit jointly sworn by Michael Maina Wanjohi, Nancy Wangari Wanjohi & Peris Wanjiku Mwika. The Applicants aver that they are the beneficial owners of the suit property which is jointly registered in the names of Charles Kariuki Murunji, John Wanjohi Mwaniki (deceased), Maingi Njima (deceased), Gachau Mwaniki (deceased) and Munanu Kariuki (deceased).
4. The Plaintiffs/Applicants allege that Munanu Kariuki (now deceased) had relinquished his share in the suit property. They therefore seek for an order for the cancellation of the name of ‘Munanu Kariuki’ on the suit property for the appropriate action of the succession and equitable distribution of the suit property.
5. In their joint affidavit, the Plaintiffs who are the legal representatives of the estates of John Mwaniki Wanjohi (deceased) and Maingi Njima (Deceased) respectively, reiterate the averments on the face of the application.

### **Determination**

6. Section 3 of the ELC Act spells out the overriding objective of the Act being to enable the Court to facilitate just, expeditious, proportionate and accessible resolution of disputes governed by the Act. It calls upon parties and their duly authorized representatives to assist the Court to further the overriding objective
7. Article 159 of the Constitution too enjoins the Courts and tribunals in exercising their judicial authority to be guided by the principles –
  - a. Justice shall be done to all, irrespective of status;
  - b. justice shall not be delayed;
  - c. alternative forms of dispute resolution including reconciliation, mediation, arbitration, and traditional dispute resolution mechanisms shall be promoted.
  - d. justice shall be administered without undue regard to procedural technicalities, and
  - e. The purpose and principles of this Constitution shall be protected and promoted.
8. The Plaintiffs’ application is premised on the allegation that the late Munanu Kariuki (deceased) had relinquished his share of the suit property. This means that the late Munanu Kariuki gave up, renounced or yielded his share of the suit property.
9. I have carefully perused the supporting affidavit in support of the application by the Plaintiffs. There is not an iota of evidence attached to the affidavit in support of the allegation that the late Munanu Kariuki gave up, renounced or yielded his share of the suit property. Instead, what is attached to the supporting affidavit is a plaint in a suit ELC No 865 of 2012 by the Administrators of the estate of the late Munanu Kariuki seeking to enforce their right in the suit property.
10. Allowing the application by the Plaintiffs as presented including the alternative prayer will not only be against the overriding objective of the ELC Act but also against the express provisions of Article 159 of the Constitution that enjoin this Court to do justice to all and to protect and promote the purpose and principles of the Constitution. The estate of the late Munanu Kariuki like all the other owners of the suit property has a right to property protected under Article 40 of the Constitution of Kenya. It is the duty of this Court and all Courts for that matter to protect the rights of all and to protect and promote the Bill of rights. The Applicants seek to deny the estate of the late Munanu Kariuki the right to property, one of the fundamental rights safeguarded under the Constitution.



11. The Plaintiff's Application therefore has no basis in law and the orders sought will amount to a violation of the right to property of the estate of the late Munanu Kariuki. The Plaintiffs must rethink their strategy of executing the decree issued in this matter. The rights of all the proprietors of the suit property must be safeguarded in the process and outcome of execution.

12. The application is hereby dismissed. The Court however, makes no orders as to costs.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6<sup>TH</sup> DAY OF AUGUST, 2024.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Magua for the Plaintiffs/Applicants

Mr. Maina Mbuthia for the Defendant /Charles Kariuki

N/A for the estate of the late Munanu Kariuki

Court Assistant: Yvette

**M.D. MWANGI**

**JUDGE**

