



**Karugu & another v Ngigi & 2 others; Njuguna (Applicant) (Land Case E002 & E003 of 2021) [2024] KEELC 5822 (KLR) (2 August 2024) (Ruling)**

Neutral citation: [2024] KEELC 5822 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
LAND CASE E002 & E003 OF 2021**

**BM EBOSO, J  
AUGUST 2, 2024**

**BETWEEN**

**JOSPHAT NJUGUNA KARUGU ..... 1<sup>ST</sup> PLAINTIFF**

**SAMUEL NYANJUI MBUGUA ALIAS SAMUEL NYANJUI**

**MURUNGA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**MARGARET NDUTA NGIGI ..... 1<sup>ST</sup> DEFENDANT**

**JOHN NJENGA KARIUKI ..... 2<sup>ND</sup> DEFENDANT**

**SAMUEL NGUGI KARIUKI ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**GRACE WAMBUI NJUGUNA ..... APPLICANT**

**RULING**

1. Falling for determination in this ruling is the notice of motion dated 22/12/2023, brought by Grace Wambui Njuguna. Through the motion, the applicant seeks to be joined as a party to this suit. In addition, she wants an order that the ultimate outcome of this suit do apply to her interest in the suit land. The two key issues that emerge for determination in the application are: (i) Whether the applicant's claim or interest in the suit land is res judicata and statute-barred under Section 7 of the *Civil Procedure Act*; and (ii) Whether the application meets the criteria for joinder to an ordinary civil suit.
2. The case of the applicant is that she bought a 2-acre portion out of land parcel number Ndeiya/Ndeiya/491 [hereinafter referred to as "the suit land" from the late Felix Ngugi Karanja [hereinafter referred to as "the deceased"]. The applicant contends that the deceased obtained subdivision consent from Kiambu Land Control Board and thereafter engaged a land surveyor to sub divide the suit land.



She adds that each of the litigants in the suit was shown their beacons and they took possession of their parcels. The applicant states that the deceased died a week after showing them the beacons, leaving them without any ownership documents.

3. The applicant further contends that they assisted one Wilson Ngugi Ng'ang'a, the only relative of the deceased who used to visit him, to bury the deceased. She adds that the said Wilson Ngugi Ng'ang'a volunteered to assist them in obtaining titles to the plots they had bought from the deceased, given that he was aware of the purchase transactions. She states that Wilson Ngugi Ng'ang'a initiated succession proceedings relating to the estate of the deceased, in which he disclosed to the court that the applicant together with others, were purchasers of the suit land. The court issued a grant relating to the estate of the deceased and eventually the applicant together with the other purchasers were issued with title deeds for their plots. However, the grant was later revoked by the Succession Court when other family members of the deceased resurfaced and claimed that they were left out of the succession petition. Consequently, the titles already issued were revoked.
4. The plaintiffs filed a replying affidavit sworn on 7/2/2024 by both Josphat Njuguna Karugu and Samuel Nyanjui Mbugua in response to the application. They do not oppose the application by the applicant. Their case is that they are aware that the applicant purchased a 2-acre portion of the suit land from the deceased, which she had been renting prior to purchasing it. The plaintiffs, however, contend that the applicant's application has the effect of dragging the suit given that it was filed a few days to the hearing of the suit, causing the hearing to be adjourned.
5. The 1st, 2nd and 3rd defendants [respondents] oppose the application through a replying affidavit sworn by themselves on 30/1/2024 and written submissions dated 13/3/2024, filed by M/s R.W. Muhuhu & Company Advocates. Their case is that the application is misplaced and bad in law and that the applicant cannot be joined in the suit or claim any interest in the suit land. The defendants contend that the applicant's claim is res judicata because she previously filed Thika ELC Case No. 1 of 2021 and the said suit was dismissed on 6/5/2021. The defendants further contend that the applicant intends to sneak back the claim that was dismissed in the previous suit through the back door. The defendants add that the application has been brought belatedly to derail the hearing and disposal of this suit. The defendants urge the court to dismiss the application with costs in order to allow the suit to proceed.
6. I have considered the application; the responses to the application; and the parties respective submissions. I have also considered the relevant legal frameworks and jurisprudence. The two key issues that emerge for determination have been outlined in the opening paragraph of this ruling. I will dispose the two issues sequentially in the order in which they are itemized.
7. Is the applicant's claim or interest in the suit land res judicata and therefore statute-barred under Section 7 of the [Civil Procedure Act](#)? The tenor and import of the common law doctrine of res judicata is that, a party whose claim has been determined through a final judgment or ruling of a court of competent jurisdiction is not permitted to relitigate the same claim or the same cause of action. The doctrine has been codified under Section 7 of the [Civil Procedure Act](#) which provides as follows:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”
8. Margaret Nduta Ngugi, John Njenga Kariuki and Samuel Ngugi Kariuki contend that the claim which the applicant seeks to ventilate as an interested party in this suit was the subject of final determination



in Thika ELC Case No 1 of 2021; Patrick Ngugi Gitau & Grace Wambui Njuguna –v- Margaret Nduta Ngugi & 2 others. It is their case that the said suit was dismissed through a merit ruling rendered by Gacheru J on 6/5/2021. They have exhibited the said ruling.

9. In her supporting affidavit sworn on 22/12/2023, the applicant stated that the succession court adjudicated their claim and revoked the Grant which had vested a portion of the suit land in her. Judge Gacheru too made a similar observation in the ruling rendered on 6/5/2021 in which she noted that the succession court revoked the Grant on 15/2/2008. This was prior to the promulgation of the Constitution of Kenya 2010.
10. Most significant to the application under consideration, it is clear from the exhibited ruling that, Judge Gacheru struck out the applicant's suit for being statute-barred. Through the ill-fated suit, the applicant sought to ventilate her interest in the suit land.
11. The applicant elected to seek joinder as an interested party. She did not expressly address the question as to whether she has a cause of action distinct from what Gacheru J found to be untenable. If she does, she has not explained what has stopped her from initiating her claim independently and seeking consolidation thereafter.
12. What is clear from materials in the present application is that the claim which the applicant seeks to ventilate as an interested party in this suit was the subject of litigation in Thika ELC Case no 1 of 2021. This Court [Gacheru J] found the claim to be statute-barred and struck it out. The applicant had the right to pursue an appeal if she was dissatisfied with the ruling of Gacheru J. Given the above circumstances and taking into account what the applicant deposed in the supporting affidavit, clearly, her claim is now res judicata and cannot be ventilated by her as an interested party in this suit.
13. The court having found that the applicant's claim is res-judicata, the plea for joinder is obviously a non-starter.
14. The result is that the application dated 22/12/2023 is rejected for lack of merit. The applicant shall bear costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 2ND DAY OF AUGUST 2024**

**B M EBOSO**

**JUDGE**

In the Presence of:

Mrs Muhuhu for the Defendant

Court Assistant: Elvis Hinga

