



**Mwangi v Githinji & 4 others (Environment & Land Case E007 of 2023)
[2024] KEELC 13375 (KLR) (21 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 13375 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT & LAND CASE E007 OF 2023**

**YM ANGIMA, J
NOVEMBER 21, 2024**

BETWEEN

EMMAH WANJIRU MWANGI PLAINTIFF

AND

MARY NJOKI GITHINJI 1ST DEFENDANT

ZAINABU MUTHONI KINYANJUI 2ND DEFENDANT

STEPHEN KIARIE TIIRI 3RD DEFENDANT

JOSEPH THUO 4TH DEFENDANT

LAND REGISTRAR NYANDARUA 5TH DEFENDANT

JUDGMENT

A. Plaintiffs' Claim

1. By a plaint dated 24.11.2023 the Plaintiffs sued the Defendants seeking the following reliefs:
 - a. A declaration that land registration numbers Nyandarua/Ol'Kalou Central/6163 – 6168 were fraudulently obtained and therefore null and void.
 - b. An order cancelling title deeds registration L.R. No. Nyandarua/Ol'Kalou Central/6163 – 6168 currently registered in the names of the 1st, 2nd, 3rd and 4th Defendants and others at their behest and all the entries made in the register and the Nyandarua Land Registrar be directed and authorized to reinstate the original title deed L.R. No. Nyandarua/Ol'Kalou Central/7 in the name of the late TERI WAMUIHU without any condition.
 - c. Costs of the suit and interests thereon.
 - d. Any other further relief as this honourable court may deem fit and just to grant.



2. The Plaintiff pleaded that at all material times she was the 2nd wife of the late James Kinyanjui Njuguna (the deceased) whereas the 1st Defendant was the 1st wife of the deceased. The 3rd and 4th Defendants were said to be brothers of the deceased and were sons of the late TERI WAMUIHU (TERI) who was the original registered owner of Title No. Nyandarua/Ol'Kalou Central/7 (Parcel 7).
3. The Plaintiff pleaded that upon the death of the deceased in 2006 the 3rd and 4th Defendants had without taking out a grant of letters of administration for the estate of TERI purported to subdivide and distribute Parcel 7 amongst the children of TERI and that they had transferred the share of the deceased being Title No. Nyandarua/Ol'Kalou Central/6167 to the 1st and 2nd Defendants and completely excluded her in the process. It was contended that the 3rd and 4th Defendants had fraudulently cited a grant issued in Nyahururu P.M. Succession Cause No. 67 of 1999 as the basis for distribution whereas that cause related to a totally different estate and not the estate of TERI.

B. 1st Defendant's Response

4. The 1st Defendant filed a defence dated 11.03.2024 denying liability for the Plaintiff's claim. She denied that the Plaintiff was the 2nd wife of the deceased and pleaded that she was merely his mistress. She pleaded that she was not involved in the succession proceedings of the estate of TERI but it was the 3rd and 4th Defendants who were involved and that she was merely called upon to execute the relevant transfer documents. She denied knowledge of the rest of the allegations in the plaint and put the Plaintiff to strict proof thereof.

C. 2nd Defendant's Response

5. The 2nd Defendant similarly filed a defence dated 11.03.2024 denying liability for the Plaintiff's claim. She denied that the Plaintiff was the 2nd wife of the deceased and asserted that she was merely a mistress. She denied any involvement in the succession proceedings for the estate of the deceased and pleaded that it was the 3rd and 4th Defendants who were involved and that she was merely called upon to sign the relevant transfer documents. She also denied all the other allegations contained in the plaint and put the Plaintiff to strict proof thereof.

D. 3rd and 4th Defendants' Response

6. The 3rd and 4th Defendants filed a joint statement of defence dated 01.03.2024 denying liability for the Plaintiff's claim. They conceded that the Plaintiff was the second wife of the deceased and that they were the administrators of the estate of TERI. They pleaded that they had fully executed their duties as administrators and completed the distribution of Parcel 7 hence the Defendant's claim ought to be directed to the 1st and 2nd Defendants who were registered as proprietors of Parcel 6167 on behalf of the estate of the deceased. It was their contention that they made all reasonable efforts to trace the Plaintiff at the material time for her to participate in the process of distribution but she could not be found. As a result, they prayed for dismissal of the Plaintiff's claim against them.

E. 5th Defendant's Response

7. The 5th Defendant filed a statement of defence denying liability for the Plaintiff's claim. He denied any fraud or illegality on his part in the distribution of the estate of the deceased and pleaded that he acted within the law at all material times. It was further pleaded that the nature of the dispute was a private dispute among family members hence the Land Registrar should not be dragged into the dispute. The 5th Defendant denied the rest of the allegations in the plaint and prayed for dismissal of the Plaintiff's suit with costs.



F. Trial of the Action

8. At the trial hereof the Plaintiff called two witnesses whereas the 1st to 4th Defendants called two. The 5th Defendant, however, did not call any evidence because it was claimed that he was unable to trace the parcel files for the properties in dispute.
9. The record shows that the Plaintiff adopted her witness statement dated 24.11.2023 as her evidence in chief at the trial and called one more witness in support of her claim. The gist of the Plaintiff's evidence was that she was the 2nd wife of the deceased hence she was entitled to a share of his estate which was jointly registered in the name of the 1st and 2nd Defendants to her exclusion.
10. The record shows that the 2nd Defendant is the one who testified on her own behalf and on behalf of the 1st Defendant who was her mother. She adopted her witness statement dated 11.03.2023 as her evidence in chief and asserted that the Plaintiff was merely a mistress of the deceased hence she was not entitled to a share of his estate.
11. The 3rd Defendant testified on his behalf and on behalf of the 4th Defendant. He adopted the contents of his witness statement dated 01.03.2024 as his evidence in chief. He contended during cross-examination by the Plaintiff's advocate that he did not undertake succession proceedings for the estate of TERI but the family relied upon a land agent called Gakuru to sub-divide Parcel 7 and that he was the one who obtained individual titles for the beneficiaries of the estate. During cross examination by the Attorney General he stated that he could not remember which documents he signed before issuance of individual titles and that he had left the matter entirely to the land agent to deal.

G. Issues for Determination

12. The court has noted that the parties did not file an agreed statement of issues for determination. As such, the court shall frame the issues 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 of the parties.
 - c. The contents of documents produced by the parties.
13. The court has considered the pleadings, evidence and documents on record in this matter. The court is of the view that the following are the key issues which arise for determination:
 - a. Whether the 1st and 2nd Defendants obtained registration of Title No. Nyandarua/Ol'Kalou Central 6167 fraudulently or irregularly.
 - b. Whether the Plaintiff is entitled to the reliefs sought in the plaint.
 - c. Who shall bear costs of the suit.

H. Analysis and Determination

a. Whether the 1st and 2nd Defendants obtained registration of Title No. Nyandarua/Ol'Kalou Central 6167 fraudulently or irregularly

14. The court has considered the material and submissions on record on this issue. The gist of the Plaintiff's claim was that she was the 2nd wife of the deceased and that she had been wrongfully excluded from getting her rightful share of the estate of the deceased by the Defendants. Whereas the 1st and 2nd



Defendants disputed that the Plaintiff was the 2nd wife of the deceased the 3rd and 4th Defendants conceded that she was. In fact, the latter contented that they tried to look for her during distribution of the estate without success as she was said to be in Tanzania at the material time.

15. The court has noted that the Plaintiff is not laying a claim to the entire Parcel 7 which belonged to the late TERI but only to the share or entitlement of the deceased out of Parcel 7. The material on record shows that the share of the deceased was comprised in Parcel 6167 and that the same was registered in the names of the 1st and 2nd Defendants. As such, the court finds no basis or justification for making any determination regarding the portions of land which were distributed to the other children of TERI since there is no legitimate dispute before this court concerning them. Consequently, the court shall restrict itself to parcel 6167 which is the subject of the instant dispute as between the Plaintiff and the 1st and 2nd Defendants.
16. The court has also noted that the 1st and 2nd Defendants conceded that they had not undertaken any succession proceedings for the estate of the deceased and they had not even participated in any succession proceedings for the estate of TERI. The court takes the view that the deceased's share in the estate of TERI could only be registered in the name of his personal representative(s) as defined in Section 3 of the [Law of Succession Act](#) (Cap.160). There is no evidence on record to demonstrate that the 1st and 2nd Defendants were appointed by any court of law to be the administrators of the estate of the deceased. There is also no evidence to show that they were granted a probate of any will left behind by the deceased. It would, therefore, follow that the 1st and 2nd Defendants were either irregularly or fraudulently registered as proprietors of Parcel 6167 whereas they were not the legal representatives of the deceased duly appointed under the [Law of Succession Act](#) (Cap.160). In view of the foregoing, the court is satisfied that the Plaintiff has demonstrated her claim against the 1st and 2nd Defendants on a balance of probabilities as required by law.

b. Whether the Plaintiff is entitled to the reliefs sought in the plaint

17. The court has already found that the Plaintiff has proved her claim against the 1st and 2nd Defendants. However, as indicated earlier, the Plaintiff's claim is not directed against the entire Parcel 7 which formed the estate of TERI but only the portion of 1.78 ha to which the deceased was entitled. There is no good reason to disturb the titles for the other beneficiaries of the estate of TERI in respect of their respective shares which are not contested. It is also noteworthy that the rest of the beneficiaries of TERI were not joined as parties to the proceedings.
18. In the premises, the court is only inclined to grant reliefs against Parcel 6167 which was the entitlement of the deceased out of the estate of TERI. The court shall thereafter direct the Plaintiff to take out proceedings before the succession court to prove her entitlement, if any, to a share of Parcel 6167 on the basis of her alleged marriage to the deceased. It shall fall upon the succession court to determine whether or not the Plaintiff was the 2nd wife of the deceased and, if so, what share of parcel 6167 she is entitled to get.

c. Who shall bear costs of the suit

19. 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 that apart from the 5th Defendant, the rest of the litigants appear to be relatives. As such, the court is of the view that each of the parties should bear his own costs. The



5th Defendant should also bear his own costs for illegally and irregularly registering Parcel 6167 in the names of the 1st and 2nd Defendants without a confirmed grant for the estate of the deceased.

I. Conclusion and Disposal Order

20. The upshot of the foregoing is that the court finds and holds that the Plaintiff has proved her claim against the 1st and 2nd Defendants in so far as Parcel 6167 is concerned. As a consequence, the court makes the following orders for disposal of the suit:
- a. A declaration be and is hereby made that the registration of the 1st and 2nd Defendants as proprietors of the Title No. Nyandarua/Ol'Kalou Central/6167 was obtained fraudulently or irregularly.
 - b. An order is hereby made for cancellation of the 1st and 2nd Defendants' registration as proprietors of Title No. Nyandarua/Ol'Kalou Central/6167 and that the same be recorded as belonging to the estate of the late James Kinyanjui Njuguna pending succession proceedings.
 - c. The Plaintiff is hereby directed to expeditiously initiate succession proceedings for the estate of the late James Kinyanjui Njuguna before the succession court to prove her entitlement, if any, to a share of Title No. Nyandarua/Ol'Kalou Central/6167.
 - d. For the avoidance of doubt, the Plaintiff's claim against Title Nos. Nyandarua/Ol'Kalou Central/6163 – 6166 and 6168 is hereby dismissed.
 - e. Each party shall bear his own costs of the suit.

It is so decided.

JUDGMENT DATED AND SIGNED AT NYANDARUA THIS 21ST DAY OF NOVEMBER, 2024 AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Mr. Ngotho for the Plaintiff

N/A for the 1st Defendant

Zainabu Muthoni the 2nd Defendant – present in person

3rd Defendant - present in person

N/A for the 4th Defendant

N/A for the Attorney General for the 5th Defendant

C/A - Carol

Y. M. ANGIMA

JUDGE

