



Ndungu (Administratrix to the Estate of Ndungu Njaraganu Kagiri (Deceased)) v Kuria & 5 others (Environment & Land Case 160 of 2018) [2024] KEELC 13278 (KLR) (12 November 2024) (Order)

Neutral citation: [2024] KEELC 13278 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 160 OF 2018
BM EBOSO, J
NOVEMBER 12, 2024**

BETWEEN

**VIRGINIA NUNGARI NDUNGU PLAINTIFF
ADMINISTRATRIX TO THE ESTATE OF NDUNGU NJARAGANU KAGIRI
(DECEASED)**

AND

**JOSEPH NGABA KURIA 1ST DEFENDANT
JOSEPH KANYINGI KAMAU 2ND DEFENDANT
GITHUNGURI CONSTITUENCY RANCHING COMPANY LIMITED 3RD
DEFENDANT
LAND REGISTRAR (THIKA LAND REGISTRY 4TH DEFENDANT
THE CHIEF LAND REGISTRAR 5TH DEFENDANT
THE HON ATTORNEY GENERAL 6TH DEFENDANT**

ORDER

1. This suit was brought by the estate of the late Ndungu Njaraganu Kagiri in May 2018. The suit was filed by the late Virginia Nungari Ndungu [referred to in this order as “Virginia”] who, at the time, was the administrator of the estate of the late Ndungu Njaraganu Kagiri. The suit challenged what the estate termed as the illegal duplicate land register opened on 22/4/2003 in relation to land parcel number Ruiru/ Kiu Block 2/3018 and the duplicate registration of Joseph Ngaba Kuria as proprietor of the land on 22/4/2003. It also challenged the subsequent transfer of the land to Joseph Kanyingi Kamau using the impugned duplicate land register and the impugned duplicate title in 2009.



2. The case of the estate of Ndungu Njaraganu Kagiri was that the late Kagiri was the lawful allottee of the land which was a subdivision in a scheme owned by M/s Githunguri Constituency Ranching Company Ltd. The estate contended that, the company having allotted the land to the late Kagiri way back in 1992, a land register was opened; the land was registered in the name of the late Kagiri; and a title deed was issued to the late Kagiri in April 2002. The estate further contended that the duplicate land register and the duplicate title that were generated in 2003 were illegal.
3. Virginia Nungari Ndungu died on 17/8/2021 during the pendency of this suit. Her son, Simon Gatonye, subsequently sought to be substituted in place of Virginia using a Limited Grant of Letters of Administration obtained in a Succession Cause relating to the estate of the late Virginia, to wit, Gatundu Magistrate Court Succession Misc Cause No E050 of 2021. The plea for substitution on the strength of the above Grant was rejected by this Court [Eboso J] through an ex-tempore ruling rendered on 8/3/2022.
4. The Court rendered itself in the ex-tempore ruling as follows:

“Ruling

The estate in respect of which substitution is to be effected is that of Ndungu Njaraganu Kagiri, not that of Virginia Nungari Ndungu. The late Virginia was merely an administrator. Virginia having died, she needs to be replaced by an administrator of the estate of Ndungu Njaraganu Kagiri. There is no evidence that the Grant issued in Nairobi Succession Cause No 895 of 2006 has been rectified/amended to appoint Simon Gatonye Ndungu as administrator of the estate of Ndungu Njaraganu Kagiri.

In the circumstances, the chamber summons dated 1/12/2021 is struck out. The estate of Ndungu Njaraganu Kagiri will be at liberty to bring a competent application supported with a copy of the rectified/amended Grant issued in Nairobi High Court Succession Cause No. 895 of 2006.

Costs in the cause.”

5. It does emerge that Simon Gatonye ignored the above ruling of this court and, instead of procuring an appropriate Grant in the Succession Cause relating to the estate of the late Kagiri, he purported to amend the plaint without leave of the Court on 16/6/2023. Through the amendments, he purported to designate the estate of Virginia as the plaintiff. It is clear that, Virginia who was the sole administrator of the estate of Kagiri having died on 17/8/2021, the suit by the estate of Kagiri abated in August 2022. It is also clear that a formal application had to be made to the Court by the estate of the late Kagiri to procure substitution and revival orders in relation to the abated suit. The above important orders were never procured by Simon Gatonye.
6. Instead, Mr Gatonye ignored the above important steps and procured a hearing date for this suit. Consequently, it has emerged at the stage of preparing to write a Judgment in this suit that the suit abated in August 2022. It has also emerged that there has never been substitution of the deceased administrator of the estate of Kagiri. Thirdly, it has emerged that there was no competent suit capable of amendment in June 2023 because this suit had already abated in August 2022. Fourthly, without a Grant of Letters of Administration relating to the estate of the late Kagiri, and without orders allowing substitution (and revival), Mr Gatonye had no capacity to effect the amendments he purported to carry out on the plaint that had been brought by the estate of the late Kagiri. Only the duly appointed administrator of the estate would have the legal capacity to amend the late Kagiri’s estate’s pleadings. What Mr Gatonye purported to engage in were illegalities. It has come to this unfortunate state of



affairs because Mr Gatonye elected to ignore the ex-tempore ruling rendered by this Court on 8/3/2022 yet he has continued to wave the title held in the name of the late Kagiri as the foundation of the claim in this suit.

7. For the above reasons, the Court comes to the finding that there is no competent suit on which to anchor a Judgment in this cause. The hearing that took place in this cause was procured through misrepresentation by Mr Gatonye and is for all purposes a nullity because the suit had abated in August 2022. Similarly, the purported amendments of June 2023 are nullities because there was no competent suit capable of attracting amendments and there was no disclosed personal representative to the estate of the late Kagiri capable of carrying out the amendments. The result is that the trial proceedings are set aside and the order reserving a Judgment date in this cause is vacated. This suit is marked “abated” and shall remain so marked unless revived in accordance with the law.
8. Because the 3rd defendant “stood by” as Simon Gatonye engaged in the above irregular processes, there will be no award of costs to them.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 12TH DAY OF NOVEMBER 2024

B M EBOSO

JUDGE

In the Presence of: -

Mr Kinyua present for the Plaintiff

Court Assistant: Melita

