



REPUBLIC OF KENYA



**Gichuhi & another v Kassim & another (Environment & Land Case 09 of 2022) [2023] KEELC 158 (KLR) (24 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 158 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 09 OF 2022  
FM NJOROGE, J  
JANUARY 24, 2023**

**BETWEEN**

**FAITH MUTHONI GICHUHI ..... 1<sup>ST</sup> PLAINTIFF**

**NANCY WAITHERERO GICHUHI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ISMAIL KASSIM ..... 1<sup>ST</sup> DEFENDANT**

**HADIJA KASSIM ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This is a ruling in respect of the Defendants Preliminary Objection dated June 20, 2022 on the following grounds:
  1. That the application herein is bad in law, misconceived and an abuse of the court process.
  2. That the Respondents have no capacity to be sued herein as the owner of the subject parcel of land known as UNS 11 COMM (Loc Market Gilgil, Nakuru) passed away on October 1, 2015 and the Respondents are not the administrators.

**Submissions**

2. The Plaintiffs' filed their submissions dated November 8, 2022 on November 10, 2022.
3. They gave a brief summary of the case and identified one issue for determination, Whether the Application herein is bad in law, misconceived and an abuse of the court process.
4. They relied on the case of *Gabriel Mbui V Mukindia Maranya* [1993] eKLR and *Phyllis Wanjiru Kamau V Wilson Gichuhi Gachagwe & 2 Others* [2019] eKLR. They submit that the 1<sup>st</sup> and 2<sup>nd</sup>



Defendants' are not just heirs to the estate of Gachuhi Gathunga but potential legal representative of the deceased estate.

5. They further submit that the Defendants' presented themselves as heirs of the estate of the deceased and urge the court to dismiss the preliminary objection with costs.
6. The Defendants' filed their submissions dated October 26, 2022 on October 28, 2022 where they gave a background of the case and identified one issue for determination, whether the Defendants' have the capacity to be sued as the owners of the subject parcel of land.
7. They submit that Kassim Ibrahim Faraj died intestate on October 1, 2015 and that the Defendants' herein are the deceased's children. The Defendants' submit that they have never been the administrators of the estate of the deceased hence they have no locus to defend the matter on behalf of the estate of the late Kassim Ibrahim Faraj.

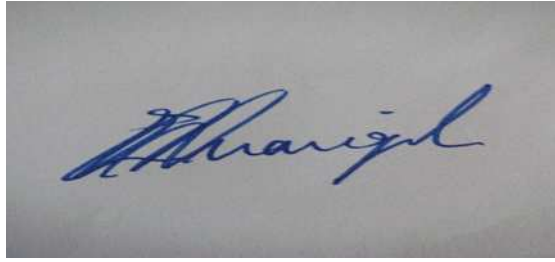
### **Analysis And Determination**

8. This court has considered the Preliminary Objection and submissions and the main issue for determination is whether the Defendants' have the capacity to be sued in this case.
9. Section 79 of the *Law of Succession Act* provides as follows: -

“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”
10. A Limited Grant of Letters of Administration ad litem is usually used when the Estate of a deceased person is required to be represented in court proceedings. It is granted to enable someone represent or defend the Estate of the deceased.
11. In the instant case, it is not in dispute that the owner of the suit property died on October 1, 2015 and his heirs have been sued as the Defendants' in this case. It is also not in dispute that the Defendants' have not taken out letters of administration ad litem. The Defendants' therefore ought to have gained capacity to be sued first before the Plaintiffs' filed this case against them. It appears that the Plaintiffs' have shot themselves on the foot since they are the ones who have instituted the present suit against the Defendants who have no locus standi. They ought to have first issued a citation to the Defendants before instituting the instant suit but they did not. There is therefore no person properly joined as defendant in this suit. In order for one to be joined to a suit, he must be a proper party.
12. In view of the foregoing, it is this court's view that the Defendants' lack the locus standi to be sued in this case. They indeed have no capacity to be sued in court on behalf of the said Estate of the deceased.
13. I accordingly allow the Preliminary Objection and strike out the entire application dated May 12, 2022. In view of what has been stated above, the plaintiffs' suit cannot stand and therefore the originating summons dated May 12, 2022 is also struck out. However, the sword cuts both ways in this case and therefore this court would also not expect that the defendants can undertake any eviction or other action in respect of the estate of the deceased against the plaintiffs without first acquiring any grant.
14. There shall be no orders as to costs.

**Dated, signed and delivered at Nakuru via electronic mail on this 24<sup>th</sup> day of January 2023.**



A rectangular image showing a handwritten signature in blue ink on a light-colored background. The signature is cursive and appears to read 'Mwangi Njoroge'.

**MWANGI NJOROGE**

**JUDGE, ELC, NAKURU**

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