



REPUBLIC OF KENYA



**Munyua & 2 others v Kibachio (Probate & Administration Appeal
E006 of 2024) [2025] KEHC 5104 (KLR) (Family) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5104 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
FAMILY**

PROBATE & ADMINISTRATION APPEAL E006 OF 2024

KW KIARIE, J

APRIL 30, 2025

BETWEEN

MIRIAM WACUKA MUNYUA 1ST APPELLANT

GEORGE MUNYUA WACUKA 2ND APPELLANT

GEORGE MUNYUA KARANJA 3RD APPELLANT

AND

PETER NJOROGI KIBACHIO RESPONDENT

*(Being an Appeal from the ruling and order in Nyabururu Chief Magistrate's
Succession Cause No.29 of 2020 by Hon. C. Obulutsa –Chief Magistrate)*

JUDGMENT

1. This matter concerns the estate of the late Maria Wanjiru Karanja. On April 29, 2021, Hon. C. Obulutsa issued a ruling recognizing the respondent as a purchaser of $\frac{1}{4}$ acre from the deceased. He ordered that the respondent be included as a beneficiary. The appellants were dissatisfied with this ruling and filed an appeal, represented by the firm of Ndegwa Wahome & Company Advocates. They raised the following grounds of appeal:
 - a. The learned magistrate erred in fact and in law and occasioned grave miscarriage of justice against the appellants in revoking the certificate of confirmation issued on the 23rd of January 2020, when no proper grounds for revocation thereof had been raised and/or proved to the required threshold or at all.
 - b. The learned magistrate erred in fact and law in finding that the respondent was entitled to a quarter acre ($\frac{1}{4}$) of land from all that parcel known as Nyandarua/Sabugo/3247 when he did not prove his claim.



- c. The learned magistrate erred in fact and law in finding that a sale agreement allegedly entered into in 1993 was enforceable against the estate over 27 years later, despite the absence of consent from the land control board and the heavy contestation of the agreement's legitimacy.
 - d. That learned magistrate erred in fact and in law and arrogated itself powers it did not have by descending into a land dispute and purporting to determine ownership of land and validity for a sale agreement within a succession cause. At the same time, jurisdiction properly lies with the Environment and Land Court.
 - e. That learned magistrate erred in fact and law and occasioned grave miscarriage of justice against the appellants in finding that the respondent herein had taken possession and planted trees on the suit land when no such trees and/or any form of possession exist on the ground and where those issues had not been pleaded. No such evidence of trees or possession was adduced in court.
 - f. The learned magistrate erred in fact and law in finding that Land Parcel No. 346 that the respondent purportedly purchased from the deceased was the same as Land Parcel No. 3247 when no such evidence existed.
 - g. The learned magistrate erred in fact and law in failing to consider the appellants' evidence, submissions and the cited cases and in placing undue reliance on the respondent's evidence and submissions when the same was unwarranted.
 - h. The learned magistrate's ruling dated the 29th of April 2021 in this matter was oppressive and not founded on sound principals of the law or otherwise and amounted to judicial overreach.
2. The firm Waichungo Martin & Company Advocates represented the respondents. The appeal was opposed on the following grounds:
 - a. Before petitioning for a grant, the respondent herein had filed a citation in their capacity as creditors against the petitioner and her sister, Monicah Wangari, and the court ordered the cited parties to petition for a grant to enable the respondent to ventilate their claim in the petition.
 - b. The application was disposed of by way of viva voce evidence, and in a judgment delivered on 29 April 2021, the grant was revoked, and the respondent was awarded his ¼ acre of land, leading to the filing of the current appeal.
 - c. The learned trial magistrate heard the parties. Based on the evidence on record and the documents produced by the parties, the court correctly found that the respondent had indeed purchased ¼ of an acre of land from the deceased and awarded it to the respondent.
 3. This Court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record, bearing in mind that I had no advantage in seeing the witnesses testify and observing their demeanour. I will be guided by the pronouncements in the case of *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its conclusions in the matter.
 4. Whenever there is a claim to a part of the estate by a third party which is disputed, the issue should be resolved in a civil suit. In *re Estate of Stone Kathuli Muinde (Deceased)* [2016] eKLR, it was held:
 28. Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the [Civil Procedure Act](#) and the Civil Procedure Rules.



This could mean filing suit at the magistrates' courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant, then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.

5. In the instant case, when the respondent staked a claim to part of the estate of the deceased, the right forum for resolving this dispute was the Environment and Land Court. This is the court with jurisdiction to determine whether the respondent had a right to lay a claim in the estate of the deceased. It was premature for him, therefore, to seek the orders that he was granted.
6. I find that the learned magistrate, sitting in family court in a Probate and Administration matter, lacked the jurisdiction to determine whether the respondent had a claim against the estate of the deceased.
7. The ruling of April 29, 2021, is hereby quashed, and all the consequential orders are set aside. Each party will bear their costs.

DELIVERED AND SIGNED AT NYANDARUA THIS 30TH DAY OF APRIL 2025

KIARIE WAWERU KIARIE

JUDGE

