



Case Number:	Environment and Land Case 345 of 2018
Date Delivered:	24 Mar 2022
Case Class:	Civil
Court:	Environment and Land Court at Nairobi
Case Action:	Ruling
Judge:	Loice Chepkemai Komingoi
Citation:	Ruth Wambui Kimani(suing as an Administratrix of the Estate of the lateFrancis Kimani Mungui & another v Agnes Kagure Kariuki & 4 others [2022] eKLR
Advocates:	Mr. Mirie for the 1st Plaintiff Mr. Mariariaa for the 2nd Plaintiff Ms Shunda for Osundwa for the 1st and 3rd Defendants
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application dismissed
History County:	-
Representation By Advocates:	One party or some parties represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT NAIROBI**

**ELC NO 345 OF 2018**

**RUTH WAMBUI KIMANI (suing as an Administratrix of the Estate of the late**

**FRANCIS KIMANI MUNGUI ALIAS KIMANI MUNGAL.....1<sup>ST</sup> PLAINTIFF**

**JOSEPH MWANGI NJERI.....2<sup>ND</sup> PLAINTIFF**

**-VERSUS -**

**AGNES KAGURE KARIUKI.....1<sup>ST</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR.....2<sup>ND</sup> DEFENDANT**

**FRANCIS KIMANI MUNGAL.....3<sup>RD</sup> DEFENDANT**

**KIMEMIAH ENGINEERING CO. LTD.....4<sup>TH</sup> DEFENDANT**

**AND**

**EDDY PETER NDUNGU KIMEMIAH..... 5<sup>TH</sup> INTENDED DEFENDANT**

**RULING**

1. This is the Notice of Motion dated 20<sup>th</sup> August 2021 brought under order 1 rule 10, order 51 rule 1 of the Civil Procedure Rules, Section 1A, 1B, 3 and 3A of the Civil Procedure Act, Cap 21, Laws of Kenya, Article 159 (2d) of the Constitution and all the enabling provisions of law.

2. It seeks orders;

**a. Spent**

**b. Spent**

**c. That this honourable court be and is hereby pleased to enjoin the interested co-plaintiff, herein EDDY PETER NDUNGU KIMEMIA, in this suit as the 5<sup>th</sup> Defendant.**

**d. Costs of this application be provided for.**

3. The grounds are on the face of the application and are set out in paragraphs 1 to 12.

4. The application is supported by the affidavit of Joseph Mwangi Njeri, the 2<sup>nd</sup> Plaintiff/Applicant sworn on the 20<sup>th</sup> May 2021.
5. The application is opposed. There is a replying affidavit sworn by Agnes Kagure the 1<sup>st</sup> Defendant/Respondent herein on the 8<sup>th</sup> October 2021. She stated that she had authority of the 3<sup>rd</sup> Defendant to swear this affidavit.
6. The 2<sup>nd</sup> and 4<sup>th</sup> Defendants did not file any responses to the application.
7. The Notice of Motion was canvassed by oral submissions on 25<sup>th</sup> November 2021.
8. I have considered the notice of motion and the affidavit in support. I have also considered the replying affidavit and the rival submissions. The issue for determination is whether this application is merited.
9. The 2<sup>nd</sup> Plaintiff seeks that Eddy Peter Ndungu Kimemiah be made the 5<sup>th</sup> Defendant in this suit. The grounds advanced are that the 5<sup>th</sup> Defendant was the donee of the Power of Attorney that was used unlawfully transfer the suit property.
10. I have gone through the court record. There is a witness statement by Eddy peter Ndungu Kimemiah dated 3<sup>rd</sup> September 2019. He states that he is the Director of the 4<sup>th</sup> Defendant in this case. He states that he sold the suit property to Kimani Mungai on or about the year 1997.
11. It is not in dispute that the intended 5<sup>th</sup> Defendant is a witness in this case by virtue of being the director of the 4<sup>th</sup> Defendant. He is the sole witness I believe he will be able to answer all the questions from the 2<sup>nd</sup> Plaintiff's counsel when the time comes.
12. I find that it is not necessary for him to be made a party in this suit.
13. In conclusion, I find no merit in this application and the same is dismissed. Costs to abide the outcome of the main suit.

It is so ordered.

**DATED, SIGNED AND DELIVERED NAIROBI THIS 24<sup>TH</sup> DAY OF MARCH, 2022**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Mirie for the 1<sup>st</sup> Plaintiff

Mr. Mariariia for the 2<sup>nd</sup> Plaintiff

Ms Shunda for Osundwa for the 1<sup>st</sup> and 3<sup>rd</sup> Defendants

No appearance for the 2<sup>nd</sup> and 4<sup>th</sup> Defendants

Steve - Court Assistant



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