



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Theru Ndirangu (Deceased) (Succession Cause
547 of 2008) [2024] KEHC 9102 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9102 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 547 OF 2008**

MA ODERO, J

JULY 26, 2024

IN THE MATTER OF THE ESTATE OF THERU NDIRANGU - DECEASED

RULING

1. Before this court for determination is the Summons dated 11th January, 2024 by which the Applicants Mary Gathoni Karingithi and Robert Mwai Nderitu seek the following orders:-
 1. That the Court be pleased to join the Applicants/
Intended interested parties as interested parties in the succession proceedings.
 2. That the court be pleased to direct the personal
Representative of the deceased John Karago Ndirangu that the sub division of the land parcels Registration Numbers Aguthi/Gatitu/1588 & Aguthi/Gatitu/1592 be undertaken in a manner that takes into consideration where any beneficiaries and purchasers have been in possession and or developed.
 3. **Costs in the cause.**
2. The application which was premised upon Rules 49 and 73 of the Probate and Administration Rules was supported by the Affidavits of even date sworn by both the 1st and 2nd Applicants.
3. The Respondents opposed the application through the Replying Affidavit dated 7th February 2021 and the further Replying Affidavit dated 29th May 2024, both sworn by the 1st Respondent John Karago Ndirangu.

Background

4. This succession cause relates to the estate of the late Theru Ndirangu alias Theru W/O Ndirangu (hereinafter ‘the Deceased’) who died intestate on 30th December 2006. The Deceased was survived by the following persons:-
 - i. Joseph Wang’ombe Ndirangu - Son



- ii. Sebastian Wachira Ndirangu - Son
 - iii. Anthony Karuri Ndirangu - Son
 - iv. Richard Gachura Ndirangu - Son
 - v. John Karago Ndirangu - Son
 - vi. Richard Gachura Ndirangu - Son
5. The only assets left behind by the Deceased were the two parcels of land known as L.R NO. Aguthi/Gatitu/1588 and LR NO. Aguthi/Gatitu/1592.
 6. Following the demise of the Deceased Grant of Letters of Administration Intestate were on 25th January, 2022 issued to her sons John Karago Ndirangu, Joseph Wang'ombe Ndirangu, Anthony Karuri Ndirangu and Sebastian Wachira Ndirangu (the Respondents herein). The Grant was duly confirmed on 25th January, 2022 and the certificate of confirmation of Grant indicated that the estate was to be divided equally amongst all the beneficiaries.
 7. The Applicants aver that they purchased portions of Aguthi/Gatitu/1588 and 1592 from one of the beneficiaries Sebastian Wachira Ndirangu (now Deceased) vide Sale Agreements dated 24th July 2012, 28th September, 2012 and 29th April, 2011. The Applicants state that they are currently in occupation of portions of plots 1588 and 1592.
 8. As such the Applicants claim to be necessary parties to the succession cause hence their application to be enjoined as Interested parties.
 9. The Respondents opposed the enjoinder of the Applicants as Interested parties in this Succession Cause. The Respondents assert that the Applicants are strangers to the estate of the Deceased. That the person who allegedly sold them portions of Plots 1588 and 1592 had no authority to do so as he was not the legal representative of the estate.
 10. The Respondents further aver that in any event this application for joinder has been overtaken by events as the Grant has been fully effectuated and the estate has been distributed and transmitted to the genuine heirs. They urge the court to dismiss the application in its entirety.
 11. The application was canvassed by way of written submissions. The Applicants filed the written submissions dated 24th June 2024. The Respondents did not file any submissions.

Analysis and determination

12. I have considered the application before this court, the reply filed thereto as well as the written submissions on record. The only issue for determination is whether the Applicants ought to be enjoined as interested parties in this succession cause.
13. Blacks Law Dictionary 9th Edition Page 1232 defines an Interested Party as "A party who has a recognizable stake and therefore standing in the matter"



14. In the case of *Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 Others* [2014] eKLR the Supreme Court of Kenya held that;
- “(22) in determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court’s Ruling in the Mumo Matemo case where the Court (at paragraphs 14 and 18) held:
- “[An] interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.....”
15. Similarly, in the case of *Meme v. Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:
- “(i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) Joinder to prevent a likely course of proliferated litigation.
16. This is a Succession Cause and this court is sitting as a Probate Court with the mandate to oversee the distribution of the estate of the Deceased, to the genuine heirs.
17. As a general rule the only parties in a Succession cause would be the beneficiaries and /or the Defendants of the Deceased. The Applicants are neither. They claim to be purchasers of estate property. A purchaser is not a necessary party in a Succession Cause.
18. The Applicants claim to have purchased portions of plots 1582 and 1592 from one Sebastian Wachira Ndirangu who was a beneficiary of the estate of the Deceased. The said ‘Sebastian Wachira’ is now deceased.
19. For purposes of clarity this cause relates to the estate of Theru Ndirangu NOT Sebastian Wachira. The Applicants do not claim to have entered into any Sale Agreement with Theru Ndirangu.
20. The Deceased herein Theru Ndirangu passed away in December 2006. The Applicants Sale Agreement are dated July and September 2012. Thus they purchased the land AFTER the demise of the Deceased.
21. It is difficult in those circumstances to see what claim the Applicants would have against the estate of Theru Ndirangu. The Applicants claim would be against Sebastian Wachira or his estate.



22. Furthermore the record indicates that the Grant was issued to the Administrators on 14th April, 2009. That Grant was not confirmed until 25th January, 2022. Prior to the confirmation of the Grant no party has the legal authority to sell, transfer or otherwise dispose of any immovable asset belonging to the estate without the leave of the court.
- Any person who purports to dispose/sell estate property before the Grant is confirmed is deemed an Intermeddler and is subject to sanction by the court.
23. Therefore any sale of estate property before the Grant was confirmed contravenes Section 82 (b) (ii) of the *Law of Succession Act*, Cap 160, Laws of Kenya which outlaws the sale by any person of immovable assets of an estate before confirmation of a Grant. As such any sale by Sebastian Wachira of estate property to the Applicants would be unlawful.
24. In my view the Applicants are not necessary parties to the determination of this succession cause, and as such there is no need to have the two enjoined as Interested Parties in this matter.
25. The Applicants claim to be entitled to portions of estate property by virtue of having purchased the same. Their remedy lies in filing a suit in the Environment and Land Court which by virtue of Article 162(2) (b) of *the Constitution* of Kenya 2010 is the only court to determine questions relating to use, occupation and ownership of land.

Section 13 of the *Environment and Land Court Act* provides for provides for the jurisdiction of that court as follows:-

13. Jurisdiction of the Court

- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2)(b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment under the land.
- (2) In exercise of its jurisdiction under Article 162(2) (b) of *the Constitution*, the court shall have power to hear and determine disputes -
- a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.

[Rev. 2012] No. 19 of 2011 Environment and Land Court 9 [Issue 1] [Own emphasis]

26. Therefore, the correct and proper forum before which the Applicants ought to ventilate any claim to Estate property is the ELC.



27. In *Re Estate of stone Kathubi MuindE (Deceased)* 2016)

eKLR Hon. Justice William Musyoka held that:-

“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 property 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 magistrate’s 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 the court can give effect to it.” [Own emphasis]

28. Finally based on the foregoing I find no merit in this application. The summons dated **11th January 2024** is hereby dismissed in its entirety.

Costs will be met by the Applicants.

Dated in Nyeri this 26th day of July, 2024

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MAUREEN A. ODERO

JUDGE

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