



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of the Late Emmanuel Naivasha Ntaari (Miscellaneous Succession Cause 19 of 2018) [2023] KEHC 134 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 134 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
MISCELLANEOUS SUCCESSION CAUSE 19 OF 2018**

**LW GITARI, J  
JANUARY 19, 2023**

**BETWEEN**

**KENNETH KITHINJI GERALD ..... 1<sup>ST</sup> APPLICANT**  
**GEORGE KINYUA NYAGA ..... 2<sup>ND</sup> APPLICANT**  
**MARY KANINI KIRAITHE ..... 3<sup>RD</sup> APPLICANT**  
**JOHNSON N'THIRI M'BITA ..... 4<sup>TH</sup> APPLICANT**  
**JULIETA KANINI JOTHAM ..... 5<sup>TH</sup> APPLICANT**  
**FELIX MUTEMBEI NJOKA ..... 6<sup>TH</sup> APPLICANT**  
**JOYCE KAARI MBUNGU ..... 7<sup>TH</sup> APPLICANT**  
**ROBERT MUGAMBI KANYARU ..... 8<sup>TH</sup> APPLICANT**  
**CHRISPUS MURIUKI MUTUA ..... 9<sup>TH</sup> APPLICANT**  
**SIMON MAINA GICHANGI ..... 10<sup>TH</sup> APPLICANT**  
**MILICENT MUTHONI MATE ..... 11<sup>TH</sup> APPLICANT**  
**LINUS MBAKA MUGO ..... 12<sup>TH</sup> APPLICANT**

**AND**

**KENFORD GITONGA EMMANUEL ..... 1<sup>ST</sup> RESPONDENT**  
**ERICK MWENDA MATE ..... 2<sup>ND</sup> RESPONDENT**



## RULING

### BACKGROUND

1. The deceased, Emmanuel Naivasha Ntaari died intestate on August 19, 1996. A petition for letters of administration was filed by Millicent Muthoni Mate who obtained a grant dated April 14, 2009 and confirmed on April 14, 2010.
2. The estate of the deceased comprised in Land Parcel No Magumoni/Mwonge/909 which was subdivided and formed Land Parcels No Magumoni/Mwonge/1241 to 1247. The estate was distributed to Harriet Ciathuni Emmanuel who was to hold Land Parcels No Magumoni/Mwonge/1245 & 1246 for herself and in trust for Christine Kaumbi Gitonga and Patrick Emmanuel. Shaban Njagi, Magumoni/Mwonge/1242, Lawrence Mbaka. Magumoni/Mwonge/1247 & 1243 to hold for himself and in trust for Joyce Kagendo Emmanuel. Millicent Muthoni Mate Magumoni/Mwonge/1244.
3. The succession cause was filed in the principal magistrate's Court at Chuka This matter came to this court vide a summons for revocation of grant dated July 9, 2018 which was filed by Erick Mwenda Emmanuel, a son of the deceased. The main ground in support of the summons were that-
  - i. The trial magistrate lacks the pecuniary jurisdiction to deal with the succession cause.
  - ii. That the grant was obtained fraudulently by making false statements. Concealment from court of something material to the case and by means of untrue allegation of fact material to the case.
4. Vide an order of this court issued by Justice Limo on July 9, 2018, the summons for revocation of grant was allowed, the grant issued to Millicent Muthoni Mate was ordered to be revoked. Millicent Muthoni Mate and Erick Mwenda Emmanuel were appointed as joint administrators on September 18, 2018. The court Limo J ordered that the estate do revert back to the deceased's name and the title deeds Magumoni/Mwonge 1241-1247 and any subdivision or transfer were ordered to be reversed.
5. There followed an application dated October 17, 2018 seeking restraining orders as well as withdrawal cautions of Land Parcel No Magumoni/Mwonge/1244. The application was spent as the court issued orders on February 5, 2019 directing that the cautions and/or restrictions on the titles number Magumoni/Mwonge/1241-1247 be removed so that the orders issued on September 18, 2018 could be implemented.
6. Thereafter, following an application dated August 21, 2019, Harriet Ciathuni was appointed as an administratrix on October 8, 2019. She unfortunately passed away on May 7, 2020 and was substituted by Kenford Gitonga.
7. At that stage what was pending, was for the Administrators to move the court for the grant of letters of administration to be confirmed and the distribution of the estate. This however was not to be as there were interested parties who following the confirmation of the grant issued in the Magistrate' Court had purchased land from the beneficiaries and had been issued with title deeds. This prompted an application dated July 13, 2020 seeking to enjoin the 1<sup>st</sup> to 10<sup>th</sup> interested parties as parties in the succession cause. They were also seeking an order that the order cancelling the title deeds be varied. This application came before the Judge on July 15, 2020 and he directed that the applicants who were purchasers do file protests and establish their purchaser's interest. At the same time since the administrators had filed summons for confirmation of grant. Millicent Muthoni one of the administratrix was ordered to file a protest after which the court would determine the issue of distribution once and with finality. It was further directed that upon filing the protests, the application



- by the interested parties dated July 13, 2020 would be treated as spent. The 1<sup>st</sup> administrator filed a summons for confirmation of grant on July 18, 2020 and is dated July 10, 2020. He also proposed a mode of distribution of the estate in his supporting affidavit sworn on July 10, 2020.
8. On the part of the second respondent, Erick Mwenda Emmanuel, he was agreeable to the summons for confirmation of grant and the mode of distribution and did not therefore wish to oppose it.
  9. Consequently following the order issued on July 15, 2020 the 12<sup>th</sup> Interested Party/Applicant herein filed an Affidavit of Protest which was sworn by himself on October 21, 2020. On the other hand, the 1<sup>st</sup> – 11<sup>th</sup> Interested Parties herein also filed a separate Affidavit of Protest that was sworn by the 1<sup>st</sup> Interested Party/Applicant.
  10. On October 8, 2020, this court directed that the hearing of the protest to proceed by way of *viva voce* evidence. Parties were then directed to file and serve witness statements and any documents they wished to rely on and hearing of the protest was scheduled to proceed on February 11, 2021.
  11. The scheduled hearing of the protest did not take place on February 11, 2021 as parties had not complied with the court direction on filing of witness statements. Counsel for the 1<sup>st</sup> -11<sup>th</sup> Applicants indicated that he will be relying on the affidavit of protest. The hearing was adjourned to June 7, 2021.
  12. On June 7, 2021, Counsel for the 1<sup>st</sup> Respondent, Mr Kirimi, indicated that he was not ready with the hearing of the protestors' case as he had not been served with witness statements and was therefore not able to proceed. On his part, the Counsel for the 2<sup>nd</sup> Respondent, Mr Mugo, also indicated that he was not ready to proceed with hearing on ground that he had reasons to cease acting for the 2<sup>nd</sup> Respondent. He thus sought time to put in his application to cease acting. The Court gave Mr Mugo 21 days to file his application to cease acting. Counsel for the 1<sup>st</sup> to 11<sup>th</sup> Interested Parties reiterated that they would not be filing affidavit evidence as they would be relying on the affidavit of protest. Mr Kirimi then sought time to file his affidavit evidence and the matter was given a mention date on July 8, 2021.
  13. From there, several applications were filed. There was the application by the 12<sup>th</sup> Interested Party/Protestor dated June 21, 2021 seeking that *status quo* on the estate be maintained. The same was allowed by the order of this court that was given on June 24, 2021. There was another application dated July 1, 2021 by counsel for the 2<sup>nd</sup> Respondent seeking to cease acting. There was then another application by the 12<sup>th</sup> Protestor that is dated September 16, 2021 orders against the Administrator for contempt of court in the allegation that he had disobeyed the court orders issued on June 24, 2021. The said application was dismissed by this Court in its ruling dated November 18, 2021. After this, parties were not clear on what was pending before court.
  14. The court ordered the parties on February 2, 2022 to take directions on the hearing of the protest and directed that the application dated July 13, 2020 be served on the counsel for the 12<sup>th</sup> Interested Party and that the same be heard first.
  15. I note that the 1<sup>st</sup> – 10<sup>th</sup> Applicants filed their submissions in respect to the application dated July 13, 2020 on October 4, 2022. On the other hand, the 1<sup>st</sup> Respondent, vide the application dated November 10, 2022, sought the stay of the ruling on the application dated July 13, 2020 that had been set for November 17, 2022 and sought leave to file his submissions against the application.
  16. Having considered this background, it is clear that the application dated July 13, 2020 was spent, or in other words, it is not pending for hearing as the orders of July 15, 2020 are still *in situ*. Before this court was derailed by the application dated September 16, 2021, directions had been given that the protest by interested parties shall be heard by way of *viva voce* evidence. This has not happened. It is my view that to regularize the proceedings and to bring this old matter a close, the protest which has not been



heard and determined shall be heard by way of *viva voce* evidence as directed by this court. The matter shall therefore be given a date for hearing of the protest and the summons for confirmation of grant.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 19<sup>TH</sup> DAY OF JANUARY 2023.**

**L W GITARI**

**JUDGE**

**19/1/2023**

**The ruling has been read out in open court.**

**L W GITARI**

**JUDGE**

**19/1/2023**

