



REPUBLIC OF KENYA



**In re Estate of Mambo Muiruri Muigai alias Muiruri Mambo (Deceased) (Succession Cause 96 of 2016) [2023] KEHC 1119 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1119 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
SUCCESSION CAUSE 96 OF 2016  
MM KASANGO, J  
FEBRUARY 23, 2023**

**RULING**

1. There is no doubt that Elizabeth Ngugi and Peter Muiruri Mwaura have been prolific applicants in this succession. They have filed many applications and as a consequence the confirmation of the grant in this matter has been stunted.
2. Background of what has led to the many applications being made is that after the death of Mambo Muiruri Mungai deceased on November 28, 1999 a petition for grant of letters of administration intestate was filed. A grant was issued on January 4, 2016 in the joint names of:-
  1. Andrew Muthee Mambo
  2. David Kariuki Muigai
  3. Peter Muiruri Mwaura
3. The deceased had married three wives and consequently, the beneficiaries are many.
4. An application for confirmation was filed in the joint names of the petitioners dated May 3, 2016. On filing of that application, it is when Elizabeth and Peter by their many applications introduced intrigues in this succession cause.
5. Elizabeth and Peter began by filing a second confirmation application dated March 7, 2018. They filed yet another amended summons for confirmation dated August 5, 2019.
6. Elizabeth and Peter filed an application dated September 6, 2019 and February 3, 2020 seeking to injunct some of the beneficiaries from interfering with deceased's property. They filed an application dated February 25, 2020 for discharge of the injunction issued on the prayers of the previous application.
7. Further, they filed applications dated September 7, 2020 whereby this court granted by its ruling of March 18, 2021 permission to Elizabeth to access a bank account in order to pay rates of the deceased's estate properties.



8. Elizabeth and Peter filed a summons dated April 9, 2021 seeking confirmation of the grant as per their application dated August 5, 2019.
9. The application that was reserved for ruling today is the one dated August 9, 2019. By that application, Elizabeth and Peter seek revocation of the grant issued hereof on the basis that some properties of the deceased were not included in this cause. Those properties they allege were left out when this succession was filed are:-Ngenda/nyamangara/116Ngenda/mbari Ya Mwhia/T.6Ndalani/mavoloniblock1/611
10. I must begin my assessment of that application by boldly stating that this court lacks jurisdiction to determine the issue brought forth in that application. This is because those properties set out above are in the name of Henry Muigai Mambo (deceased). Henry was a son of the deceased in this succession cause. He was a child of the first house. Henry (deceased) died on August 20, 2015. A petition for grant of letters of administration was filed in respect to the estate of Henry deceased before Gatundu Magistrate's Court Succession Cause No 256 of 2017 on September 8, 2017. The aforesaid properties were listed as part of the assets of Henry deceased's estate. The grant was issued by Gatundu Magistrate's court in the estate of Henry (deceased) to David Kariuki Muigai on November 9, 2017. That grant was confirmed by the Gatundu Magistrate's court on December 6, 2018. That grant having been confirmed, the properties stated above were distributed to the beneficiaries of Henry deceased. Those properties are therefore not and cannot be the subject of this estate in this action.
11. As I stated, this court lacks the jurisdiction to entertain the application dated August 9, 2019. In this regard, it is useful to refer to the Court of Appeal case of [\*Peter Gichuki King'ara v Independent Electoral and Boundaries Commission & 2 others\*](#) on jurisdiction thus:-

“23. In the present appeal, the starting point is the decision in *Lillian 'S' Case* as restated by the Supreme Court in the matter of advisory opinions of the Supreme Court under article 163(3) of the [\*Constitution\*](#)- constitutional application No 2 of 2011:-

“The *Lillian 'S' case* [[1989] KLR 1] establishes that jurisdiction flows from the law, and the recipient-court is to apply the same, with any limitations embodied therein. Such a court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity.”

12. By their application dated August 9, 2019, Elizabeth and Peter seek to revoke the grant issued hereof on the grounds that properties registered in the name of Henry deceased were not included in this succession cause. This court while entertaining this matter does so as by enforcing the [\*Law of Succession Act\*](#). That jurisdiction was discussed in the case of In [\*Re Estate of Samuel Kathieri \(deceased\)\*](#) (2019) eKLR as follows:-

“

“16. It is clear therefore that this court's jurisdiction is to enforce the [\*Law of Succession Act\*](#) cap 160 on administration of testate and intestate estates of deceased persons. In this regard the High Court shall hear and determine issues of issuance of grants, summons for confirmation of grants where lists of beneficiaries, lists of assets and modes of proposed distribution of estates are agreed and consented to by all beneficiaries. Where there is contest, the court may proceed to hear and determine the protests and revocation of grants applications.



Where there is dispute as to what constitutes the net estate of the deceased available for distribution arising from contest as to deceased's title and ownership, then the distribution of the said asset is hived off and confirmation of grant of the undisputed assets may be granted to allow beneficiaries beneficial interest over the said part of the estate. If the contested asset(s) is /are the only ones available for distribution as in the instant case, then the confirmation proceedings grind to a halt pending outcome of the ownership and title of the said properties by Environment and Land Court.”

13. The dispute which Elizabeth and Peter seek this court to resolve by their application on the rightful owner of the said properties lies squarely within the jurisdiction of the Environment and Land Court: See article 162 (2)(b) and *Environment and Land Court Act* section 13.
14. It follows from the above discussion that the application under consideration fails.
15. I cannot however leave this matter just at the determination of that application. Elizabeth and Peter have delayed the conclusion of this Succession, where the deceased died in 1999, by filing various applications and affidavits. Their applications have simply harassed all the other beneficiaries into submission not to proceed with this succession. That behaviour by Elizabeth and Peter will lead this court to find they are not fit to continue to be the co-administrators of this estate. Further, in order to pave the way to a conclusion of this matter, I shall proceed in exercise of this court's inherent power to stop the abuse of the court process by Elizabeth and Peter.
16. The courts have pronounced themselves on that inherent power, and it is useful to consider such pronouncements in the case *Yes Housing Co-operative Society Limited v Kenneth Onsare Maina* [2022] eKLR thus:-

“ 5. In *Mitchell and others v Director Of Public Prosecutions and another* (1987) LRC (const) 128, it was held that:

‘... in civilized society legal process is the machinery used in the courts of law to vindicate a man's rights or to enforce his duties. It can be used properly, it can be used improperly, and so abused. An instance of this is where it is diverted from its proper purpose, and is used with some ulterior motive, for some collateral one or to gain some collateral advantage, which the law does not recognize as legitimate use of that process. But the circumstance in which abuse of process can arise are varied and incapable of exhaustive listing. Sometimes it can be shown by the very steps taken and sometimes extrinsic evidence only. But if and when it is shown it happened, it would be wrong to allow the misuse of that process to continue. Rules of court may and usually do provide for its frustration in some instance. Others attract the res judicata rule. But apart from and independent of these there is the inherent jurisdiction of every court of justice to prevent an abuse of its process and its duty to intervene and stop proceedings, or put an end to it. This inherent power has been used time and again to put a summary end to a process which seeks to raise and have determined an issue which



has been decided against the party issuing it in earlier proceedings between the parties.’

6. In dealing with the issue of abuse of the process of the court Kimaru, J in Stephen Somek Takwenyi & another vs. David Mbuthia Githare & 2 others Nairobi (Milimani) HCCC No 363 of 2009 expressed himself as follows:

‘This is a power inherent in the court, but one which should only be used in cases which bring conviction to the mind of the court that it has been deceived. The court has an inherent jurisdiction to preserve the integrity of the judicial process. When the matter is expressed in negative tenor it is said that there is inherent power to prevent abuse of the process of the court. In the civilised legal process it is the machinery used in the courts of law to vindicate a man’s rights or to enforce his duties. It can be used properly but can also be used improperly, and so abused.’”

### **Disposition**

17. In summation of the discussion above, I grant the following orders:-
- a. The application dated August 9, 2019 is dismissed because this court does not have jurisdictions to entertain it. There shall be no order as to costs of that application.
  - b. The applications dated March 7, 2018, August 5, 2019, February 25, 2020, September 6, 2019, April 9, 2021 and April 19, 2021 are hereby struck out for being abuse of court process. There shall be no order as to costs.
  - c. Accordingly, the injunction issued on March 3, 2020 is hereby lifted and vacated.
  - d. Elizabeth Wangari Ngugi and Peter Muiruri Mwaura are hereby removed from being administrators of this estate. Accordingly, the grant issued on January 4, 2016 is hereby revoked. To that end, I order a fresh grant be issued to:-Andrew Muthee MamboDavid Kariuki Muigai.
  - e. The application for confirmation of grant dated May 3, 2016 shall be fixed for hearing at the reading of this ruling.
  - f. That application for confirmation of grant dated May 3, 2016 shall be served upon all the beneficiaries.
  - g. Elizabeth Wangari Ngugi and Peter Muiruri Mwaura shall not file any further applications in this matter without leave of the court save that they may file affidavit of protest to confirmation application dated May 3, 2016.
  - h. The Deputy Registrar shall forthwith return the file attached to this file of Gatundu Magistrate’s Court Succession Cause No 256 of 2017.
18. Orders accordingly.

**RULING DATED and DELIVERED at KIAMBU this 23<sup>rd</sup> day of FEBRUARY, 2023.**

**MARY KASANGO**

**JUDGE**



**Coram:**

Court Assistant: Mourice /Julia

For Paul Ndungu: Njoroge Kugwa advocates:- Ms. Waigwa

For Samuel Kinuthia : Wambui Ngugi Advocates:- N/A

For David Kariuki : Ms. Joan Muigai

Elizabeth Wangari:- In person: present

Peter Muiruri Mwaura :- In person: Present

**COURT**

*Ruling delivered virtually.*

**MARY KASANGO**

**JUDGE**

