



REPUBLIC OF KENYA



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In re Estate of James Githere Njuguna alias J. Githere Njuguna (Deceased) (Succession Cause 978 of 1989) [2022] KEHC 3219 (KLR) (Family) (29 June 2022) (Ruling)

Neutral citation: [2022] KEHC 3219 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 978 OF 1989

AO MUCHELULE, J

JUNE 29, 2022

**IN THE MATTER OF THE ESTATE OF JAMES GITHERE
NJUGUNA ALIAS J. GITHERE NJUGUNA (DECEASED)**

BETWEEN

CATHERINE KIBUI MBURU GITHERE APPLICANT

AND

AYUB NDUNGI GITHERE RESPONDENT

RULING

1. When the petition in respect of the deceased James Githere Njuguna alias J. Githere Njuguna (who had died intestate on 4th September 1973) was filed by his widow Eddah Wambui Githere and son David Mburu Githere on September 5, 1989, his estate was indicated to comprise Kiambaa/Kihara/103, Kiambaa/Kihara/T.239, Karai/Gikambura/ 581, 237 shares at East Africa Breweries and Bank Account No. 240-722-181 and some shares and monies at the Kenya Commercial Bank. The grant was issued on November 13, 1989, and confirmed on December 7, 1990. The estate went to Eddah Wambui Githere.
2. Eddah Wambui Githere died. On 18th September 2013 David Mburu Githere applied for the rectification of the confirmed grant. He proposed that Kiambaa/Kihara/103 be rectified to read Kiambaa/Kihara/603 and that Kiambaa/Kihara/603, Kiambaa/ Kihara/T.239 and Karai/Gikambura/581 be registered absolutely in his name. It should be noted that the deceased had in all five children. The application for rectification was supported by Ayub Ndungi Githere (the respondent) who was one of the children. The application as allowed and the certificate of confirmation was amended in which it was indicated that each of Kiambaa/Kihara/603, Kiambaa/Kihara/T.239 and Karai/ Gikambura/581 was to be jointly owned by David Mburu Githere and Ayub Ndungi.



3. David Mburu Githere died intestate on 21st June 2019. His wife Catherine Kibui Mburu Githere (the applicant) petitioned the High Court at Kiambu in Succession Cause No. 90 of 2019 and obtained a grant which was confirmed on October 26, 2020. In the certificate of confirmation, the applicant became the absolute proprietor of the estate which included Kiambaa/Kihara/1056 and Kiambaa/Kihara/1681. The two had become the administrators of the estate. The grant was further rectified on 18th January 2017 and amended certificate of confirmation issued showing that David Mburu Githere, the respondent, Joshua Kimani Githere and James Githere Njuguna were going to equally share each of Kiambaa/Kihara/603, Kiambaa/Kihara/239 and Karai/Gikambura/ 581. In the further rectification of 16th April 2018 the administrators added the name of Madrine Mbaire Kamau as one of the beneficiaries to equally share in the three properties. Upon the death of David Mburu Githere, the respondent further caused the rectification of the grant on November 6, 2019 in which he became the only administrator. In the new certificate of confirmation, David Mburu Githere was removed from being administrator and beneficiary. The beneficiaries to equally share the three properties were James Githere Mburu, the respondent, Joshua Kimani Githere and Madrine Mbaire Kamau.
4. On 19th May 2020 the respondent sought yet a further rectification. He claimed that the property Kiambaa/Kihara/239 had been erroneously included as part of the properties of the deceased; that the correct property was Kiambaa/Kihara/1056. The application was allowed and on 28th June 2021 a new certificate of confirmation issued to say that the respondent, James Githere Mburu, Joshua Kimani Githere and Madrine Mbaire Kamani were going to equally share each of Kiambaa/Kihara/603, Kiambaa/Kihara/1056 and Karai/Gikambura/581.
5. It is this rectification that is subject of the present application by the applicant. She seeks its revocation. Her complaint was that by this time she was the administrator of the estate of David Mburu Githere following High Court at Kiambu Succession Cause No. 90 of 2019 in which she had become the owner of Kiambaa/Kihara/1056. The certificate had been issued on October 26, 2020. She was not made aware of the application for rectification that led to the certificate of confirmation issued on 28th June 2021 in which her Kiambaa/Kihara/1056 was indicated to belong to the deceased and given to the respondent and the three others to her exclusion. Secondly, that Kiambaa/Kihara/1056 had on February 24, 2021 been registered in her name and title issued to her and therefore ought not to have been the subject of application by the respondent for the rectification of the grant in respect of the deceased. Thirdly, that Kiambaa/Kihara/1056 had never been registered in the name of the deceased and therefore ought not to have been made the subject of this case. She produced the green card to show the history of this parcel. She produced the proceedings of the High Court in Kiambu that had given her the parcel.
6. The respondent filed a response sworn on December 8, 2021. He claimed that Kiambaa/Kiharu/1056 was never the property of David Mburu Gathere and was therefore illegally made the subject of the succession proceedings in Kiambu that led it to being given to the applicant. If that is his case, he ought to have complained in the proceedings in Kiambu. Instead, without reference to the applicant and without disclosing to the court about the Kiambu proceedings, he misled this court into dealing with the property which at the time did not belong to the deceased and now belonged to the applicant. His conduct was not only mischievous but also fraudulent. He failed to disclose material facts. His intention was to defraud the estate of his brother David Mburu Githere of this parcel.
7. The respondent claimed that when the parcel was transferred from their late mother Eddah Wambui Githere to David Mburu Githere, the latter was supposed to hold it in trust for all the children of the deceased. Once again, that complaint ought to have been made in Kiambu Court.



8. In short, the applicant has satisfied the court that the rectified certificate of confirmation that was issued on June 28, 2021 to the respondent was on the basis of material non-disclosure and on fraudulent information. Under section 76 of the *Law of Succession Act* (Cap. 160), I revoke the grant that was issued to the respondent and review and set aside the certificate of confirmation that was issued on June 28, 2021. The respondent will pay the costs of the application.

DATED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JUNE 2022

A.O. MUCHELULE

JUDGE

