



**In re Estate of Francis Kangethe Felix Alias Felix Kangethe Mbithi Alias Kang'the Mbithi (Deceased) (Succession Cause 118 of 2016) [2022] KEHC 3035 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 3035 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
SUCCESSION CAUSE 118 OF 2016**

**MM KASANGO, J**

**JUNE 23, 2022**

**IN THE MATTER OF THE ESTATE OF FRANCIS KANGETHE  
FELIX ALIAS FELIX KANGETHE MBITHI ALIAS KANG'THE  
MBITHI (DECEASED)**

**RULING**

1. There are three applications for consideration by this Ruling. Two of those applications are filed by parties who are beneficiaries of this Estate. I shall begin to consider those two application together in the first instance.
2. The summons dated 17<sup>th</sup> August 2020 is filed by Felix Kangethe Mbithi (hereafter Felix). The summons dated 25<sup>th</sup> September 2020 is filed by Beatrice Njeri Kangethe.
3. The deceased at the time of his death was the registered owner of Land Parcel No. Kabete/lower Kabete/43. The deceased held that property on his behalf and in trust of a sister and brother. The deceased and his said siblings are all deceased. It however follows that the subject property ought to be inherited by the three houses that is the house of the deceased in this succession cause and the deceased's siblings.
4. This succession cause has been marred by disagreements which have revealed themselves by the many applications on the court record. Thankfully though, Justice C. Meoli issued a grant to three persons representing the interest of the three houses. The three persons appointed administrators of estate in this succession are:-
  - a. Edward Mbithi Kangethe
  - b. Loise Gachiku Kinuthia
  - c. Patrick Njenga
5. On the same day the said appointments of administrators was made the grant was confirmed with the three houses obtaining portion of Land held in trust by the three administrators on behalf of



their respective family members. The allegation by Felix and Beatrice that they were not granted any portion of land is well responded to by one of the administrator namely Edward Mbithi Kangethe, in his affidavits sworn on 18<sup>th</sup> February 2021, thus:

“That I wish to inform the court that the claim by the family members Felix Kangethe Mbithi and Beatrice Njeri Kangethe is already addressed because the two of them are getting what the other family members to whom I am the trustee are getting, which is a quarter an acre each subject to provision of the roads to each.”

6. Felix by his application dated 17<sup>th</sup> August 2020 and Beatrice by her application dated 25<sup>th</sup> September 2020 seek revocation of the grant on the basis that there was no provision made for them to inherit the estate of the deceased.
7. I am satisfied as deponed in the affidavit of Edward Mbithi Kangethe that the two have been adequately provided for in the distribution of the estate. I cannot discern any defectiveness in the issuance of the grant nor is there any fraud. Indeed, Justice C. Meoli confirmed the grant following consent recorded before court by the family members.
8. It is a consequence of the above discussion that the application dated 17<sup>th</sup> August and 25<sup>th</sup> September 2020 are dismissed.
9. The third application for consideration is dated 29<sup>th</sup> September 2020. It is filed on behalf of Charles Gatoto Thuku who lays claim to the subject property on the basis that he bought the land from the beneficiaries of this Estate.
10. I have looked at the sale agreement dated 15<sup>th</sup> April 2008. That agreement reveals that the beneficiaries of this estate were selling their presumed share of the estate of the deceased.
11. Whether or not the said purchaser is entitled to claim the property he alleges he purchased from the beneficiaries cannot be determined by this court. The *Law of Succession Act* deals with the distribution of the estate of the deceased and not determination of rights over Land. This is made clear in the Case *In re Estate Of Tumbolavu (deceased)* (2019) eKLR as follows:-

“For purposes of directing the interested parties, it suffices to cite Musyoka J In re Estate of Stone Kathuli Muinde (Deceased) [2016] eKLR 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 properly 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 magistrates’ 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 that court can give effect to it.”

12. It follows that the purchaser’s application for revocation of grant must and does fail.

### **Disposition**

13. Bearing the above discussion in mind, the following are the orders of this Court:
  - (a) The applications dated 17<sup>th</sup> August and 25<sup>th</sup> September 2020 are dismissed with no order as to costs.



(b) The application dated 29<sup>th</sup> September 2020 is dismissed with costs.

**RULING DELIVERED, DATED AND SIGNED AT KIAMBU THIS 23RD DAY OF JUNE, 2022.**

**MARY KASANGO**

**JUDGE**

**Coram:**

Court Assistant : - Mourice

For Felix Kangethe Mbithi: - N/A

For Beatrice Njeri Kangethe: - Ms. Mwathi

For Charles Gatoto Thuku: - N/A

For Henry Kemia Topiko: - N/A

For Virginia Wanjiku Gathoni: - N/A

For Loise Kinuthia & Edward Mbithi :- Mr. Njanja

For Benson Mwaniki:- Ms. Mwathi H/B Mr. Gachoka

Court

Ruling delivered virtually.

**MARY KASANGO**

**JUDGE**

