



REPUBLIC OF KENYA



**Gitau & 2 others v Rurigi & another (Succession Cause 2079 of 2011)
[2022] KEHC 12605 (KLR) (Family) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12605 (KLR)

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

FAMILY

SUCCESSION CAUSE 2079 OF 2011

AO MUCHELULE, J

JULY 27, 2022

IN THE MATTER OF THE ESTATE OF PETER

GATHIRU RURIGI - (DECEASED)

BETWEEN

MBUGUA GITAU 1ST APPLICANT

WAWERU GITAU 2ND APPLICANT

JOHN KARIUKI GITAU 3RD APPLICANT

AND

AGNES MWIHAKI RURIGI 1ST RESPONDENT

LUCY WAMBUI RURIGI 2ND RESPONDENT

RULING

1. The deceased Peter Gathiru Rurigi died intestate on April 14, 2011. His estate comprised Kiambaa/Kanunga/1241 measuring 2.06 Ha. He was survived by a widow Agnes Mwihaki Rurigi (1st respondent) with whom he had five children.
 - a) Stephen Njoroge Rurigi;
 - b) John Njuguna Rurigi;
 - c) Lucy Wambui Rurigi;
 - d) Samuel Wahome Rurigi; and
 - e) Joseph Munyua Rurigi.



2. The deceased had another wife Hannah Muthoni with whom he got three children;
 - a) David Munyua Rurigi;
 - b) George Kariuki Rurigi; and
 - c) Michael Gathiru Rurigi.

He separated from Hannah Muthoni who has since remarried.

3. On February 7, 2012a joint grant was issued to Agnes Mwihaki Rurigi (1st respondent) and Lucy Wambui Rurigi (2nd respondent). When they applied for the confirmation of the grant, Hannah Muthoni and her children protested. The dispute was heard and on February 2, 2017 a judgement was delivered which excluded Hannah Muthoni from benefitting in the estate. Her children were, however, found to be beneficiaries. The estate was distributed and a certificate of confirmation issued.
4. The present application is dated July 24, 2019 and brought under Section 76 of the Law of Succession Act (Cap. 160) to revoke the grant as confirmed after setting aside the judgment. The applicants are Mbugua Gitau, Waweru Gitau and John Kariuki Gitau. They are brothers. They claim 2 acres of Kiambaa/Kanunga/1214. They state that they were born and brought up in the 2 acres. They were born in 1973, 1968 and 1978, respectively. They were brought up on the land by their late grandfather Mbugua Kiuna and late grandmother Wambui Mbugua. They were informed by their grandmother that their grandfather bought the 2 acres from Gathiru Njuguna but it was not excised or transferred. Their grandfather died in 1965. He was buried here. Their grandmother died in 1989. She was buried here. The applicants have developed the 2 acres on which they were left. Their grievance is that they were not made aware of the proceedings leading to the grant and certificate of confirmation, with the effect that they had been disentitled. They state that when the deceased herein got the land on August 26, 1993 he held the 2 acres in trust for the family of the late Mbugua Kiuna. Had they been aware of the proceedings, they state, they would have lodged their claim. They therefore claim that they were not heard in the dispute.
5. The 1st respondent and Michael Gathiru Rurigi each filed a replying affidavit to oppose the application. They denied the claims of the applicants. It was stated that the applicants have no documents evidencing any sale of the two acres to their grandfather. It was contended that they were not entitled to be served as they were neither beneficiaries nor dependants of the estate of the deceased. The 1st respondent stated that the grandparents of the applicants were living on the disputed land illegally.
6. It is my considered view that the applicants' claim regards the ownership of the 2 acres of Kiambaa/Kanunga/1214. The ownership arose from the alleged purchase of the 2 acres. They then have lived on the land for over 33 years, they say, with the knowledge of the respondents. They allege that the deceased held the two acres in trust for them, and therefore they ought to have been included in the cause to lay claim to the two acres.
7. A long drawn inquiry and hearing will have to be conducted to trace the history of Kiambaa/Kanunga/1214, the said purchase of the 2 acres and the status of the applicants in relation to the 2 acres. It would appear from the applicants that the land was bought before they were born. They state that everything they know about the 2 acres was from their grandmother who has since died. The value of her evidence will have to be investigated. In short, this succession court would not jurisdictionally delve into these long drawn matters. The court that can hear and determine the applicant's dispute would be the Environment and Land Court created under Section 13 (1) of the Environment and Land Court Act and Articles 162 (2) and 165 (5) (b) of the Constitution.
8. For want of jurisdiction, I dismiss the application with costs.



DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JULY 2022.

A.O. MUCHELULE

JUDGE

