



**Kagiri v Mbuthia & 3 others (Succession Cause 515 of 2010)
[2022] KEHC 13139 (KLR) (Family) (28 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13139 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 515 OF 2010
AO MUCHELULE, J
SEPTEMBER 28, 2022**

BETWEEN

GEOFFREY MUGO KAGIRI APPLICANT

AND

JOHN MWANGI MBUTHIA 1ST RESPONDENT

JANE NDATA MBUTHIA 2ND RESPONDENT

GEORGE KAMAU MBUTHIA 3RD RESPONDENT

MAGDALENE GATHONI MWANGI 4TH RESPONDENT

RULING

1. The deceased Geofery Rotter Mbuthia *alias* Geoffrey Rotter Mbuthia died intestate on January 22, 2010 at Sinai Mt Hospital. Following the judgment delivered on November 29, 2019 by the Hon Justice Asenath Ongeru, the respondents John Mwangi Mbuthia, Jane Nduta Mbuthia, George Kamau Mbuthia and Magdalene Gathoni Mwangi were appointed as the administrators of the deceased's estate. The grant has not been confirmed.
2. When the petition was filed on March 19, 2010, one of the properties indicated to belong to the deceased was LR No Ngong/Ngong/17301. In the application by way of notice of motion dated December 15, 2021, the applicant Geoffrey Mugo Kagiri is seeking leave to file an objection to the grant of letters of administration intestate that was issued to the respondents. The basis of the intended objection is that the grant was obtained fraudulently and by the concealment from the court of material facts relating to the estate. The alleged material fact is that the applicant had bought LR No Ngong/Ngong/17301 from the deceased and obtained title to it and yet the respondents had included it as part of the estate of the deceased.



3. The 1st, 2nd and 3rd respondents filed a notice of preliminary objection dated March 30, 2022 challenging the jurisdiction of this court to hear and determine the application and intended objection by the applicant. Their case was that the questions being raised in the application and intended objection belong to the environment and land court, and not to the succession court.
4. My considered view is that there is ownership dispute between the applicant and the deceased over the ownership of LR No Ngong/Ngong/17301. The applicant states that he bought the parcel from the deceased while he was alive, paid full purchase price, and was registered as the proprietor and issued with title. The response by 1st, 2nd and 3rd respondents is that the applicant has a fraudulent claim to the parcel of land; that the deceased never sold him the parcel; that the title deed got lost in the bank where it had been used as a collateral to a loan; the loss was reported to the Land Registrar who cancelled the title; but that, somewhere along the line, the applicant got himself registered as the proprietor.
5. A succession court proceeds on the basis that the property comprised in the estate of a deceased were his free property under section 3 of the Law of Succession Act (Cap 160) that he would freely deal with while alive. The court is then called upon to determine the beneficiaries of the deceased and distribute the properties to them in accordance with the Act. Where the ownership of the property is in dispute, the succession court has to postpone the distribution of the property until such time that the environment and land court created under articles 162(2)(b) and 165 (5) of the Constitution and section 13 of the Environment and Land Act has determined that indeed the property belonged to the deceased. (Elijah Gachoki & another v Stanley Mugo Kariuki & another [2016]eKLR; In Re Estate of Alice Mumbua Mutua (Deceased) [2017]eKLR).
6. The estate of the deceased has the respondents as the administrators. If the applicant claims to be the owner of the parcel, he should sue them in the environment and land court and prove his claim. In the same manner, if the respondents feel aggrieved that the applicant has fraudulently obtained the parcel which otherwise belonged to the deceased, they have the responsibility to sue him to protect the deceased's claim to the property, and make it available for distribution to the beneficiaries.
7. In the final analysis, on account of jurisdiction, I find that the preliminary objection dated March 20, 2022 is sustainable with costs. The application dated December 15, 2021 by the applicant is struck out with costs for want of jurisdiction.
8. It follows that, until the question of the ownership of the of Ngong/Ngong/17301 is determined, its distribution will be postponed.
9. So that this cause is not left undetermined, given the date that the deceased died and the matter filed, I direct that within 60 days the respondents, or either of them, shall file and serve application for the confirmation of the grant. On service, there will be response within 30 days. The matter shall be mentioned on January 20, 2023 for further directions.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF SEPTEMBER 2022.

A.O. MUCHELULE

JUDGE

