



In re Estate of Manasseh Josiah Gathimba - (Deceased) (Succession Cause 1176 of 2008) [2022] KEHC 13095 (KLR) (Family) (26 September 2022) (Ruling)

Neutral citation: [2022] KEHC 13095 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1176 OF 2008
AO MUCHELULE, J
SEPTEMBER 26, 2022
IN THE MATTER OF ESTATE OF MANASSEH JOSIAH GATHIMBA - (DECEASED)**

BETWEEN

JOHN KIMARU GATHIMBA APPLICANT

AND

WINNIE WANGARI WAIRIMU 1ST RESPONDENT

MARY GAKII GATHIMBA 2ND RESPONDENT

RULING

1. What is up for determination is the application dated 25th November 2021 by John Kimaru Gathimba (the applicant) against Mary Gakii Gathimba (the 1st respondent) and Winnie Wangari Wairimu (the 2nd respondent) seeking the following orders:-
 - “1) That the transfer and registration of Winnie Wangari Wairimu as the proprietor of L.R No. Mutira/Kirimunge/490 be declared fraudulent, be cancelled and the parcel of land ownership be ordered to revert to the deceased as the Proprietor;
 2. That Winnie Wangari Wairimu be declared to be an intermeddler of the deceased’s estate together with any other person who was a party to the fraudulent registration and be punished;
 3. That the respondent be ordered to account for rental proceeds realized from plot at Komarock Estate L.R No. Nairobi/Block 111/1761 - a 3 bedroom house from the month of September 2007 to date and the said rental proceeds



be deposited in a joint account in the name of the applicant, John Kimaru Gathimba and Mary Gakii Gathimba;

4. That the respondent be ordered to account for deceased's pension benefit amounting to Kshs 1,774,800 out of which only Kshs.295,800/= was paid to the applicant instead of Kshs. 887,400/= as a consequence a sum of Kshs. 591,600/= be declared due and payable to the applicant, John Kimaru Gathimba;
 5. That the respondent be ordered to account for deceased's monthly pension benefit paid to the respondent for five (5) years and the same be deposited in a joint account in the name of the applicant, John Kimaru Gathimba and the respondent, Mary Gakii Gathimba;
 6. That the costs of this application be provided for.”
2. The background of the dispute is that the deceased Manasseh Josiah Gathimba Gicheru died intestate on 18th April 2006 at the Kenyatta National Hospital. During his life, the deceased married Joyce Wambui Gathimba (who later died) and the 1st respondent. He got 4 children with the 1st respondent. He had no child with Joyce Wambui Gathimba but the two brought into their household the applicant whom they subsequently regarded as their child.
 3. The deceased had L.R. No. Nairobi Block III/1761 (a three bedroomed house at Komarock), L.R. No. Mutira/Kirimunge/490 and, upon his death, left pension. Before his death he had registered L.R. No. Nairobi Block III/1761 in his name jointly with Joyce Wambui Gathimba and L.R. No. Mutira/Kirimunge/490 in his name jointly with the 1st respondent. Joyce Wambui Gathimba died before the deceased. L.R. No. Nairobi Block III/1761 is on rent, and the rental income is the subject of some of the prayers in the application.
 4. Following the death of the deceased, the 1st respondent got LR No Mutira/Kirimunge/490 to be registered in her name, and she later sold it to the 2nd respondent who got a transfer. The applicant's case was that the sale and transfer were fraudulent and amounted to intermeddling as this was estate property that was sold without reference and without the authority of the court, now that the grant in respect of the estate of the deceased that was issued to the 1st respondent and the late Andrew Njogu Gicheru on 26th May 2009 had not been confirmed.
 5. The 1st respondent's response in regard to the sale and transfer was that she was the surviving joint owner of the parcel and was entitled to acquire ownership without being subjected to the process of succession. Her counsel Mr. Kirimi made reference to section 60 of the [Land Registration Act](#) which provides that:-

“ If any of the joint tenants of any land, lease or charge dies, the Registrar shall, upon proof of the death, delete the name of the deceased tenant from the register by registering the death certificate.”
 6. The counsel further cited the decision [in Re Estate of Johnson Njogu Gichohi \(Deceased\)](#) [2018]eKLR which reiterated the position that the joint property was the subject of the principle of survivorship which operates to remove jointly owned property from the operation of the law of succession upon the death of one of the joint tenants.
 7. The submission by Mr. Kirimi represents the correct position of the law. Upon the death of the deceased, the 1st respondent was not obliged to file a succession cause before getting L.R. No. Mutira/



Kirimunge/490 to be transferred to her. She was a joint owner with the deceased, and all that was required was for her to present the deceased's death certificate to the Land Registrar for him to delete his name and to have her become the sole owner of the property. Once she became the sole owner, she was entitled to deal with it in any manner, including selling it. It follows that the claims that she intermeddled with the estate of the deceased, or that she fraudulently dealt with the same, have no merit. This was not estate property. In the same way, the 2nd respondent received a good title to the land when she bought it from the 1st respondent. Her title cannot be impeached.

8. As for rental income from LR No. Nairobi Block III/1761, the law under section 83(e) of the *Law of Succession Act* (Cap 160) obliges the 1st respondent, as an administratrix of the estate of the deceased, to account to the court and to the beneficiaries regarding her dealings with the estate property. I ask her to file and serve an affidavit of a full and accurate account of all rental income she has so far received from 1st September 2007 to date, and how she has applied the same. If some of it has been given to the applicant or any of the other beneficiaries, the particulars should be provided. The affidavit should be filed and served within 60 days from today. The applicant or any other beneficiary shall have leave of 30 days to respond to the same.
9. Regarding the dispute over the deceased's pension, under sections 36A and 46(1) of the *Retirement Benefits Act*, No. 3 of 1997 the matter should be dealt with by the Chief Executive Officer of the Retirement Benefits Authority.
10. This matter shall be mentioned on 30th November 2022 for further orders.

DATED AND DELIVERED AT NAIROBI THIS 26TH SEPTEMBER 2022.

A.O. MUCHELULE

JUDGE

