



REPUBLIC OF KENYA



**In re Estate of Kamau Nduti (Deceased) (Succession Cause 1773 of 2010)  
[2022] KEHC 14408 (KLR) (Family) (26 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14408 (KLR)

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

**FAMILY**

**SUCCESSION CAUSE 1773 OF 2010**

**AO MUCHELULE, J**

**OCTOBER 26, 2022**

**IN THE MATTER OF THE ESTATE OF KAMAU NDUTI (DECEASED)**

**BETWEEN**

**LUCY KIGIO KAMAU ..... 1<sup>ST</sup> ADMINISTRATOR**

**MARGARET WAGIKUYU KUNGU ..... 2<sup>ND</sup> ADMINISTRATOR**

**AND**

**JOHN NDIRANGU KAMAU ..... 1<sup>ST</sup> RESPONDENT**

**GEOFFREY KAIGAI KAMAU ..... 2<sup>ND</sup> RESPONDENT**

**NJOROGE KAMAU ..... 3<sup>RD</sup> RESPONDENT**

**JOSEPH KAMAU KARICHU ..... 4<sup>TH</sup> RESPONDENT**

**JOSEPH NJUGUNA KAMAU ..... 5<sup>TH</sup> RESPONDENT**

**JAMES NG'ANG'A KAMAU ..... 6<sup>TH</sup> RESPONDENT**

**AND**

**MUTHONDU KAMAU ..... PROTESTOR**

**RULING**

1. The deceased Kamau Nduti died intestate on 19<sup>th</sup> December 1978 at Gatundu Hospital in Kiambu. He left the following children:-
  - a. Geoffrey Kaigai Kamau;
  - b. Muthondu Kamau;



- c. Joseph Kamau Karichu;
  - d. James Nganga Kamau;
  - e. Ndirangu Kamau;
  - f. John Wanyoike Kamau;
  - g. Joseph Njuguna Kamau;
  - h. Florence Wambui Njoroge;
  - i. Lucy Kigio Kamau; and
  - j. Margaret Wagikuyu Kungu.
2. On 24<sup>th</sup> November 2014 Lucy Kigio Kamau and Margaret Wagikuyu Kungu were issued with a grant of letters of administration intestate. In the application dated 14<sup>th</sup> December 2020 they applied to have the grant confirmed. In the application they sought that the court does forthwith nullify the sale of Gatwanyaga/Plot No. 240 and that the Land Registrar in Gatundu should have the title revert to the estate of the deceased. Their case was that Geoffrey Kaigai Kamau, Muthondu Kamau, Joseph Kamau Karichu, James Nganga Kamau, Ndirangu Kamau, John Nyoike Kamau and Joseph Njuguna Kamau had clandestinely sold and transferred the parcel which belonged to the estate of the deceased.
  3. The other prayer in the summons for confirmation was the court declares that Ngenda/Kahunguini/1274 registered in the name of the protestor Muthondu Kamau was held in trust for the estate of the deceased.
  4. John Ndirangu Kamau, Geoffrey Kaigai Kamau, Njoroge Kamau, Joseph Kamau Karichu, Joseph Njuguna Kamau and James Ng'ang'a Kamau (the respondents) filed grounds of opposition saying that the issues being raised in relation to the two parcels could not be dealt with by this court because of want of jurisdiction; that Ngenda/Kahunguini/1274 did not form part of the deceased's estate; and that the parcel had been subject of a litigation in ELC Court and a determination made thereon.
  5. Muthondu Kamau (the protestor) opposed the application in relation to Ngenda/Kahunguini/1274 saying that the ELC Court in Case No. 1161 of 1980 had determined that the parcel belonged to him. John Ndirangu Kamau swore a replying affidavit on behalf of his brothers to oppose the application. He stated that the ELC Court had found that Ngenda/Kahunguini/1274 did not belong to the estate of the deceased.
  6. From the material annexed by both sides, the protestor Muthondu Kamau and the deceased herein were brothers. The protestor was the registered proprietor of Ngenda/Kahunguini/16. He filed a suit against the sons of the deceased (the respondents) claiming that they had unlawfully remained on the land. He sought their eviction. The respondents laid in claim to the land saying it belonged to the deceased, their father, and that was how they were on the land. They filed a counterclaim. In a judgment delivered on 30<sup>th</sup> July 1992 in High Court at Nairobi Civil Case No. 1661 of 1980 the court declared that the protestor held 20 acres of Ngenda/Kahunguini/16 for the respondents in the case. In an application dated 20<sup>th</sup> December 2018 the administratrices herein unsuccessfully sought to be joined in the cause to claim the 20 acres on behalf of the estate of the deceased. It follows that a decision has already been made regarding Ngenda/Kahunguini/1274 and there has been no appeal in the matter. The court held that the land belonged to the respondents (more particularly, the defendants in that case), and not the deceased. The quest that this court declares this parcel to belong to the estate of the deceased cannot be granted as the dispute over the parcel has been determined by a competent court.



7. Secondly, if the respondents sold the estate's Gatuanyaga/Plot No. 240 to third parties to whom a transfer was effected, this court would not deal with the dispute for two reasons. One, a suit to recover the estate property would have to be filed by applicants, who are the administratrices of the estate of the deceased, before the ELC Court created under section 13 of the *Environment and Land Court Act* and Articles 162(2) and 165(5)(b) of *the Constitution*. Two, the persons who bought the parcels were not joined in these proceedings. Even if this court had jurisdiction, it cannot issue orders against a party who was not joined in this cause, and who was not been heard.
8. In the summons for the confirmation of the grant, the applicants indicated that the other properties of the estate were:-
  - a. L.R No. Ngenda/Gathage/232;
  - b. L.R No. Ngenda/Kahunguini/1331;
  - c. L.R No. Ngenda /Gathage/T95; and
  - d. L.R No. Ngenda/Kahunguini/T331;

They proposed how the parcels should be shared. They proceeded on the basis that Ngenda/Kahunguini/1274 also belonged to the deceased and was available for distribution. I have just found that it does not belong to the estate of the deceased. John Ndirangu Kamau did not, in his affidavit, say anything about the proposed distribution of the other parcels.

9. I suspect that, without Ngenda/Kahunguini/1274, the applicants will review their proposal on sharing. To be fair to them, and to the respondents, I will adjourn the distribution of the estate of the deceased. I direct that within 30 days the applicants will file and serve a fresh proposal regarding the distribution of the free properties of the estate of the deceased. On service, the respondents shall within 30 days file and serve their responses on the proposal.
10. This matter shall be heard on 27<sup>th</sup> February 2023. Costs shall abide the cause.

**DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 26<sup>TH</sup> DAY OF OCTOBER 2022**

**A.O. MUCHELULE**  
**JUDGE**

