



REPUBLIC OF KENYA



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**In re Estate of Gathi Mwate (Deceased) (Succession Cause 151 of 2007)  
[2022] KEHC 16630 (KLR) (23 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16630 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 151 OF 2007  
RN NYAKUNDI, J  
DECEMBER 23, 2022  
IN THE MATTER OF THE ESTATE OF GATHI MWATE (DECEASED)**

**IN THE MATTER OF**

**JOHNNES MWANGI GATHI ..... 1<sup>ST</sup> PETITIONER  
JOSEPH HINGA GATHI ..... 2<sup>ND</sup> PETITIONER  
JAMES WAINAINA MWANGI ..... 3<sup>RD</sup> PETITIONER  
PETER NJOROGE MWANGI ..... 4<sup>TH</sup> PETITIONER**

**RULING**

1. Before me are summons for confirmation of grant dated October 12, 2020 in which the petitioner seeks orders that: -

1. That the grant of letters of administration intestate made to the petitioners in this matter on March 22, 2022 be confirmed.
2. That costs of this application be in the cause.

2. The Summons are further supported by the affidavit of Johnnes Mwangi Gathi Joseph Hinga Gathi and James Wainaina Mwangi sworn on June 27, 2022. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> petitioners want the that the grant of letters of administration made to them on March 22, 2022 be confirmed. The 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> petitioners' deposed that the deceased herein died on February 21, 2002 and was survived by the following dependants;

Johnnes Mwangi Gathii - Son

Joseph Hinga Gathi – Son

James Wainaina Mwangi – Son

Samuel Kamau Mwangi – Son



Mary Wairimu Kabuga – Son

Peter Njoroge Mwangi – Son

3. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> petitioners maintain that save from the abovementioned dependants, there are no other dependants of the deceased. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> petitioners deposed that the identification of assets and shares of all persons beneficially entitled to inherit from the estate of the deceased has been ascertain as follow;
  - a. Kapsaret/Kapsaret Block 1 (Yamumbi) No 367 – measuring 4 acres to be wholly given to Samuel Kamau Mwangi.
  - b. Juja Kiaura Plot 210 – measuring 0.0585 HA – to be wholly given to Peter Njoroge Mwangi.
  - c. Kiganjo/Handege Plot T/96 – to be wholly given to Peter Njoroge Mwangi.
  - d. Market Lockup No 215 – to be wholly given to Peter Njoroge Mwangi
  - e. Kiganjo/Handege Plot No 669 – to be wholly given to Peter Gitua Muhia (purchaser).
  - f. Juja Kiaura Plot 171 measuring 0.8811 – to be shared equally between Johnnes Mwangi Gathii, Joseph Hinga Gathi, James Wainaina Mwangi and Mary Wairimu Kabuga.
  - g. Kahawani Plot 683 – measuring ½ acre to be shared equally between Johnnes Mwangi Gathii, Joseph Hinga Gathi and James Wainaina Mwangi.
  - h. Share No 215 – to remain the name of Johnnes Mwangi Gathi.
4. The application is however opposed by Peter Njoroge Mwangi, the 4<sup>th</sup> petitioner herein.
5. The 4<sup>th</sup> petitioner does not agree with the proposed mode of distribution by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> petitioners. The 4<sup>th</sup> petitioner deposed that that the 1<sup>st</sup> petitioner has sold property known as Kiganjo/Handege Plot No 669 measuring approximately 2 acres without the consent of all the beneficiaries.
6. The 4<sup>th</sup> petitioner maintains that property known as Market Lockup No 215 belongs to him and thus does not form part of the estate of the deceased.
7. The 4<sup>th</sup> petitioner deposed that parcel of land known as Kahawani Plot 683 belongs to him and that he has a title deed to that effect.
8. The 4<sup>th</sup> petitioner contends that he has not been given any monies or assets belonging to his late father.
9. The 4<sup>th</sup> petitioner deposed that the deceased had 7 acres of in Kuresoi in parcel of land known as Mwarangania Farmers Society but the same were sold by the 1<sup>st</sup> petitioner herein.
10. The 4<sup>th</sup> petitioner contends that parcel of land known as Kiganjo/Handege Plot No 669 was sold by the 1<sup>st</sup> petitioner, 2<sup>nd</sup> petitioner and Mary Wairimu Kabuga and the proceeds thereof were shared amongst the three.
11. The 4<sup>th</sup> petitioner maintains that the parcels of land known as Juja Kiaura Plot 171 and 210 were given to be him in 1997 by the deceased and that he has been in possession and occupation of the two parcels to date. The 4<sup>th</sup> petitioner further deposed that the title deeds to the said parcels however are still in the deceased's name. The 4<sup>th</sup> petitioner also averred that he is possession of the said titles.
12. The 4<sup>th</sup> petitioner is not willing to take parcel of land known as Kiganjo/Handege Plot T/96 and proposed that the same be given to his other siblings and that he instead given parcel of land known as Juja Kiaura Plot 171.



13. As for share No 215, the 4<sup>th</sup> petitioner deposed that the same be shared equally amongst all the beneficiaries of the deceased and not Johnnes Mwangi Gathi alone.
14. The 4<sup>th</sup> petitioner also filed submission dated October 31, 2022.
15. The 4<sup>th</sup> petitioner proposes that the deceased's estate be distributed as follows;

NO.	PROPERTIES	SIZE	BENEFICIARIES
GATUNDU/ HANDEGE PLOT NO 66	2 ACRES	JOHNNES MWANGI AND JOSEPH HINGA	
HANDEGE GATUNDU PLOT NO T96	¼ OF ACRE	JOHNNES MWANGI AND JOSEPH HINGA	
MWARAGANIA/ KURESOI MOLO	7 ACRES	JOHNNES MWANGI	
LAIKIPIA NGARUA	3 ACRES	JOHNNES MWANGI	
KAPSARET/ KAPSARET BLOCK 1 (YAMUMBI) 367	4 ACRES	SAMUEL KAMUA	
GACHORORO/ JUJA BO. 171	2 ACRES	PETER NJOROGE MWANGI	
GACHORORO/ JUJA/201	1/8 ACRES	PETER NJOROGE MWANGI	

16. The 4<sup>th</sup> petitioner submitted that the deceased gave him parcels of land known as Gachororo/Juja/171 and Gachororo/Juja/210 while he was alive and that he died before transferring the same to him. the 4<sup>th</sup> petitioner reiterated that he has been in occupation and possession of the said parcels since 1997. The 4<sup>th</sup> petitioner submitted that he has developed parcel of land known as Gachororo/Juja/210 measuring 1/8 and has built permanent houses on it.
17. The 4<sup>th</sup> petitioner reiterated that parcel of land known as Kiganjo/Handege Plot No 669 was sold by the 1<sup>st</sup> petitioner and Mary Wairimu Kabuga and the proceeds thereof were shared equally between the two leaving out the rest of the beneficiaries. The 4<sup>th</sup> petitioner maintains that the subject parcel belonged to the deceased and the 1<sup>st</sup> transferred the same to himself when there was a pending succession cause in court in Eldoret Succession Cause No 151 of 2007. The 4<sup>th</sup> petitioner deposed that the said transfer is questionable and the subsequent transfer to the said Peter Gathi Muhia.
18. The 4<sup>th</sup> petitioner contends that his aforementioned proposed mode of distribution is fair.



19. The 4<sup>th</sup> petitioner submitted that the shares in Gachororo Farmers Limited being share No 215 be shared equally amongst all the beneficiaries.
20. The 4<sup>th</sup> petitioner wants parcel of land known as Gachororo/Juja/171 measuring 2 acres be given to him as it is the only asset, he calls home.
21. Regarding Gachororo Farms Stall No 215 the 4<sup>th</sup> petitioner submitted that the same does not form part of the deceased's estate as it belongs to him and he has a certificate of ownership to that effect. The 4<sup>th</sup> petitioner further submitted that parcel of land known as Juja/Kiaura Block 1/643 does not also form part of the deceased's estate as he already has title to it.

### **Determination**

22. I have read carefully considered the pleadings, evidence and submissions on record.
23. From the pleadings by the respective parties, it is evident that their dispute as to the proposed mode of distribution to be adopted by the court. The 4<sup>th</sup> petitioner is opposed to the mode of distribution that has been submitted by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> petitioners herein. The 4<sup>th</sup> petitioner has raised weighty concerns regarding the said proposed mode of distribution. The 4<sup>th</sup> petitioner is in fact alleging ownership of some of the properties that have been listed thereinunder. The 4<sup>th</sup> petitioner has also raised allegations of intermeddling by some of the beneficiaries of the deceased's estate.
24. If distribution on record, there is a variance in terms of the names of the suit properties that have been listed in each of the proposed mode of distribution. I cannot conclusively tell what is in fact the proper land referencing for the said suit properties.
25. Bearing in mind that the mode of distribution in the instant cause is the main bone of contention, the court can only determine the issues aforementioned if parties were to tender *viva voce* evidence. The issues being raised herein are weighty and cannot be determined at the juncture, they would naturally require the calling of witnesses and evidence.
26. In light of all the above, I do make the following final orders on the application before me: -
  - i. The summons for confirmation of grant dated June 27, 2022 and filed in court on June 30, 2022, be and is hereby dismissed.
  - ii. Parties to tender *viva voce* evidence on the mode of distribution of the estate of the of the deceased.
  - iii. Each party shall bear its own costs noting that the claim herein is a succession cause involving members of one family.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET THIS 23<sup>RD</sup> DAY OF DECEMBER, 2022.**

**R. NYAKUNDI**

**JUDGE**

