

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 3103 OF 2013

IN THE MATTER OF THE ESTATE OF PETER MBUGUA GITAGIA (DECEASED)

GEORGE MBUGUA KIARIE

GRACE MUMBI MBUGUA.....ADMINISTRATORS/ APPLICANTS

VERSUS

JANE WAMBUI MBUGUA.....1ST RESPONDENT

PAUL MBAKI MBUGUA.....2ND RESPONDENT

RULING

1. The applicants George Mbugua Kiarie and Grace Mumbi Mbugua are the administrators of the estate of the deceased Peter Mbugua Gitagia who died intestate on 26th July 2011. He left an estate comprising Kiambaa/Thimbigua/1160, Kiambaa/Muchatha/T.556 and Kiambaa/ Muchatha/T.557. A grant was issued on 3rd April 2014, and confirmed on 26th July 2016. The estate was distributed to nine beneficiaries, who included the applicants. Parcel Kiambaa/Muchatha/T.557 was equally shared by the applicants and Daniel G. Kiarie.
2. There is no dispute that following the death of one Elizabeth Wairimu Gitagia on 29th July 2013, **High Court Succession Cause No. 1675 of 2004** was filed at Nairobi by the respondents Jane Wambui Mbugua and Paul Mbaki Mbugua. She left a Will in which she named her properties as Kiambaa/Muchatha/T.557 and Kiambaa/Waguthu/935. The respondents obtained a grant which was confirmed on 4th October 2017, with an order that they equally share each parcel.
3. The parties are in dispute over Kiambaa/Muchatha/T.557. The applicants state that it belonged to the deceased Peter Mbugua Gitagia in whose name it was registered. The respondents state that it belonged to the deceased Elizabeth Wairimu Gitagia who willed it to them. Their case is that the property belonged to, and was registered in the name of, Elizabeth Wairimu Gitagia but that the deceased Peter Mbugua Gitagia had fraudulently transferred it to his name. They have lived on this land.
4. The respondents have filed **ELC Case No. 301 of 2018 at Thika** to be able to get the land from the applicants. The matter is pending.
5. Before this court, the applicants by application dated 18th October 2018 sought that the respondents be evicted from the land; be committed to civil jail for intermeddling with the property; and to account for rent in respect of the house on the property. The application was opposed.
6. The applicants were aware of the land dispute in Thika. The application is an abuse of the process of the court, and cannot therefore be granted.
7. Secondly, the dispute is rightly before an ELC court which has jurisdiction to determine the ownership of the parcel. The court will deal with the alleged fraudulent registration of the land.
8. I dismiss the application with costs.

DATED and DELIVERED at NAIROBI this 24th day of JULY 2019.

A.O. MUCHELULE

JUDGE