



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**SUCCESSION CAUSE NO. 321 OF 2010**

*(IN THE MATTER OF THE ESTATE OF GATUNGU GUANDARU (DECEASED))*

**GUANDARU GATUNGU..... APPLICANT**

**VERSUS**

**FRANCIS GATEERE.....1<sup>ST</sup> RESPONDENT**

**ESTHER WAMUYU PAUL.....2<sup>ND</sup> RESPONDENT**

**GEORGE KIRERU GATUNGU.....3<sup>RD</sup> RESPONDENT**

**RULING**

By an application dated 2<sup>nd</sup> March, 2017, the applicant prayed for “review or amendment” of the “order” made in **Nyeri Principal Magistrates Court Succession Cause No. 67 of 2007** on 26<sup>th</sup> March, 1993. The cause in the magistrates’ court which the applicant has made reference to was subsequently transferred and registered to this court as the cause herein. The applicant seeks for review or amendment of “the order” so that certain parcels of land initially awarded to the applicant, his brother John Muriuki Gatungu and their mother Regina Wanjugu Gatungu can be registered in his name and that of his brother instead of their mother who is now deceased. He also sought for the certificate of confirmation of grant to be issued in those terms. Finally, the applicant asked this court to direct the deputy registrar to execute the transfer forms to effect the transmission of the property into the applicant’s and his brother’s names.

According to the affidavit which the applicant filed in support of his application, a judgment was entered on 26<sup>th</sup> March, 1993 to distribute the estate of one Gatungu Guandaru who apparently was polygamous at the time of his death. The share of the estate due to the house from which the applicant and his brother came was to be registered in the name of their mother Regina Wanjugu Gatungu, apparently for herself and in trust for her two sons. The applicant has exhibited on his affidavit a copy of the certificate of death showing that their mother died of pneumonia on 27<sup>th</sup> January, 2012 at the age of 83 years old before the transmission of their share. It is under these circumstances that he effectively seeks to have their share of the deceased’s estate registered in their names rather than in the mother’s name.

George Kireru Gatungu opposed the application and deposed in his replying affidavit that the judgment sought to be reviewed arose from an award by an arbitrator and it is only the arbitrator who could review it. He also deposed that he has not refused to execute the transfer documents and, therefore, as I understand him, the order seeking for transmission documents to signed by the deputy registrar is not necessary.

The record shows that the “order” which the applicant seeks to “amend” is actually a decree given by the

magistrate's court on 26<sup>th</sup> March, 1993. Its origin is a judgment that was itself an adoption of an arbitral award.

Perhaps to appreciate its content and tenor, it is necessary that I should reproduce it here:

**(IN COURT ON 26<sup>TH</sup> MARCH, 1993 BEFORE JS MUSHELLE-DEPUTY REGISTRAR)**

**DECREE**

*This matter coming up for hearing of application dated 11<sup>th</sup> February, 1993 for setting aside of the award in the presence of the Applicant in person and counsel for the respondent and **UPON READING** the application and the replying affidavit by the respondent and upon hearing submissions by both parties.*

**IT IS HEREBY ORDERED:**

1. **THE** Applicant's application for setting aside of the award is hereby dismissed.
2. **The** award filed herein is hereby entered and confirmed as judgment of the court.
3. Land Parcel No. **Iriaini/Kairia/471** measuring 3 acres or thereabouts is awarded as follows:

(a) All fragments given to the 1<sup>st</sup> house i.e. **JOHN WERU GATUNGU** and **FRANCIS GATERE GATUNGU** be measured and registered to(sic) **FRANCIS GATERE GATUNGU**

(b) All fragments given to the 2<sup>nd</sup> house be measured and registered to(sic) **GEORGE KIRERU GATUNGU** for (sic) his behalf and on (sic) trust of **MUITA GATUNGU** his brother.

(c) All fragments given to the 3<sup>rd</sup> house (i.e. **JOHN MURIUKI GATUNGU, REGINA WANJUGU GATUNGU AND GUANDARAU GATUNGU** be measured and registered in the name of **REGINA WANJUGU GATUNGU**.

(d) **MURIUKI KINGATHIA** should measure and register on the portion he has been utilizing.

*Given under my hand and seal of the court this 26<sup>th</sup> day of March, 1993*

*Issued at Nyeri this 20<sup>th</sup> day of January, 2017*

*Signed*

**DEPUTY REGISTRAR**

**NYERI**

In view of the demise of Regina Wanjugu Gatungu I find no reason why the applicant and his brother should not be registered as proprietors in common in equal shares of the share of their deceased's estate due to their house. In the same breath, I do not find any substance in the objection by George Kireru Gatungu to this proposal. His argument that only the arbitrator can review the decree is misplaced because the decree sought to be amended is the decree of the court and not the arbitration award. In any event the moment the award was made, the arbitrator was thereby rendered *functus officio*. I also do not see the prejudice the respondent will suffer if all the applicant is seeking for is the share that has all along belonged to their house.

I am also inclined to grant the order directing the Deputy Registrar to execute the necessary transmission documents in order to enforce the transmission of the estate as decreed by the court on 26<sup>th</sup> March, 1993. Although the respondent says that this order is unnecessary, he will not be prejudiced in any way if it is granted. I also note that the transmission documents have not been signed since 1993 when the decree was made.

In view of the fact that there is already a court decree, there is no need to order for issue of a certificate of confirmation of grant; it is the decree that should be enforced. Accordingly, prayers (a) and (c) of the applicant's application dated 2<sup>nd</sup> March, 2017 are hereby allowed; prayer (b) is rejected. Parties will bear their own respective costs.

**Signed, dated and delivered in open court on 22<sup>nd</sup> September, 2017**

Ngaah Jairus

**JUDGE**