



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**CIVIL APPEAL NO. 106 OF 2014**

**IN THE MATTER OF NGUGI GATHINWA alias GEOFFREY NGUGI GITHINWA  
(DECEASED)**

**DAMARIS NYAMBURA NGUGI.....APPLICANT**

**VERSUS**

**FRANCIS MUTUA NGUGI.....1<sup>ST</sup> RESPONDENT**

**JOYCE NYOKABI NGUGI.....2<sup>ND</sup> RESPONDENT**

**MILKAH WANJIRU NGUGI.....3<sup>RD</sup> RESPONDENT**

**RULING**

By the application under certificate of urgency filed on 4<sup>th</sup> June, 2015, the Applicant's advocate Mr. E. Gaturu applied for consolidation of Civil Appeal Number 106 of 2014 and Civil Appeal Number 40 of 2014 both in the Family Division of the High Court, to be heard in one Court. The basis is that both appeals are from the same matter whose judgment was rendered on 7<sup>th</sup> May, 2010 in Kiambu Chief Magistrate's Court Succession Cause No. 246 of 2004. Secondly the parties are similar and the issues raised on both appeals for determination are similar too.

The 2<sup>nd</sup> Respondent Joyce Nyokabi Ngugi filed grounds of opposition of 16<sup>th</sup> June, 2015 and through her lawyer Mr. Kimani and stated that the two (2) appeals should not be consolidated on the following grounds;

- a. The Applicant did not attach pleadings of Nairobi High Court Civil Appeal No. 40 of 2014
- b. This Court cannot make the order without looking at and reading through the Appeal No. 40 of 2014.
- c. The grounds of appeal are not similar.
- d. The appellants' application lacks merit and should be dismissed.

The Court has perused both appeals and observed as follows;

In Civil Appeal No. 106 of 2014 the appellant; Damaris Nyambura Ngugi is the 3<sup>rd</sup> wife of the deceased. She is aggrieved by the judgment of the Principal Magistrate in Succession Cause No. 246 of 2004 because she and her eleven (11) children were disinherited from the deceased's estate among other grounds.

In Succession Appeal No. 40 of 2014 Milkah Wanjiru Ngugi, the daughter of the deceased by the 4<sup>th</sup> wife (who is deceased) is aggrieved by the judgment of the Kiambu Principal Magistrate's Court in Succession Cause No. 246 of 2004 on the following grounds;

- a. The Magistrate's Court lacked jurisdiction because the value of the estate exceeded the Court's pecuniary jurisdiction.
- b. The confirmation of grant was due to improper disclosure of material facts and it amounted to exclusion of some beneficiaries.

This Court is of the following views;

The two (2) appeals are interrelated

- a. The Appellants and Respondents in both appeals are members of the family of the deceased Ngugi Gathinwa alias Geoffrey Ngugi.
- b. The appeals arise from the same judgment of the Court in Kiambu Principal Magistrate's Court Succession Cause No. 246 of 2004 dated on 7<sup>th</sup> May, 2014.
- c. Even if heard in separate Courts the same issues will arise for determination.

These issues are;

- a. The question of jurisdiction of the Court in Kiambu Law Courts hearing and determining the matter;
- b. The mode of distribution of the deceased's estate, which invariably includes determination of who are the beneficiaries, the assets that comprise the deceased's estate and the most fair and equitable mode of distribution

By virtue of **Section 1A and 1B of the Civil Procedure Act** as these proceedings are in form of civil process albeit under the **Family Law Division and applying the Law of Succession Act Cap 160**, civil disputes should be resolved fairly and expeditiously.

The import of **Section 1A and 1B of Civil Procedure Act** is that the overriding objective of civil process is to facilitate the just, expeditious proportionate and affordable resolution of civil dispute both in terms of time, resources and expeditious disposal of cases .

**The Court orders as follows**

**Civil Appeal No. 106 of 2014 and Civil Appeal No. 40 of 2014 be consolidated and heard in one (1) Court within the Family Division. On a hearing date obtained in the Registry.**

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF JUNE 2015.**

**M. W. MUIGAI**

**JUDGE**

***In the presence of;***

***Mr. Gaturu for the Appellants, and***

***Mrs. Kuria for the Respondents.***