



Mwangi (Sued in my Capacity as the Personal Representatives of Francis Mwangi Gitau aka Francis Kinuthia Gitau) v Kinuthia (Environment & Land Miscellaneous Case E011 of 2024) [2025] KEELC 3567 (KLR) (5 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3567 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND MISCELLANEOUS CASE E011 OF 2024**

MN GICHERU, J

MAY 5, 2025

BETWEEN

STEPHEN NDUNGU MWANGI APPLICANT

SUED IN MY CAPACITY AS THE PERSONAL REPRESENTATIVES OF FRANCIS MWANGI GITAU AKA FRANCIS KINUTHIA GITAU

AND

SUSANA WAMBUI KINUTHIA RESPONDENT

RULING

1. This ruling is on the notice of motion dated 19-7-2024. The motion which is by the Plaintiff is brought under Section 3A of the [Civil Procedure Act](#) and all other enabling provisions of the law seeks two residual orders.
 2. The caution lodged against Plot No. Loc.11/Maragi/1193/16B by Susan Wambui Kinuthia be lifted and/or removed.
 3. That the costs of this application be borne by the Cautioner Susan Wambui Kinuthia.
2. The motion is based on five(5) grounds and is supported by an affidavit sworn by the Applicant dated 19-7-2024 which has two (2) annexures. The gist of the motion is as follows. Firstly, the Applicant was the successful party in Succession Cause No. 75 of 2017 at Murang'a Law Courts where he and Teresia Nyambura Mwangi were confirmed as the legal representatives of the estate of the late Francis Kinuthia Gitau. The court ordered that the suit property be sold and the proceeds shared equally among all the beneficiaries of the estate. Secondly, a suit was filed being ELC E029/2021 which was decided in favour of the Applicant. The Respondent was a party in the suit and she did not appeal. She also did not appeal against the decision in Succession Cause No. 75 of 2017. Thirdly, the Respondent lodged a caution prohibiting any dealing with the suit land. Finally, the Respondent has no proprietary right



over the suit land and in any case, she has not filed a suit against the Applicant. For the above and other reasons, the Applicant prays that the motion be allowed.

3. The motion is opposed by the Respondent who has sworn a replying affidavit dated 16-9-2024 in which she deposes as follows. Firstly, the suit premises is not owned by the Applicant's father alone. It is owned by him and the Respondent's husband the late Michael Manuthia Gitau jointly. Secondly, the Respondent is not a beneficiary of the estate of Francis Kinuthia Gitau and could not therefore have known about the succession cause. Thirdly, the Applicant misled the court to make it believe that the entire suit premises belonged to their deceased father alone. Fourthly, the Respondent is in the process of filing an application for review of the grant dated 15-12-2023 to correct the glaringly anomaly. Fifthly, the half share of the suit land which belongs to the estate of the late Michael Manuthia Gitau is the subject of Succession Cause No. E479 of 2024. Finally, the suit land is too small and cannot be subdivided on the ground between the two families but they can agree on what to do with it after the conclusion of the pending succession cause.
4. Counsel for the parties filed written submissions dated 30-10-2024 and 30-1-2025. The only issue identified in the submissions is as follows.
 - a. Whether the application for removal of the caution is merited.
5. I have carefully considered the motion in its entirety including the grounds, supporting affidavit, replying affidavit, annexures and the submissions by learned counsel for the parties. I find that the motion dated 19-7-2024 has no merit for two (2) reasons.

Firstly, I find that there is an unresolved dispute as to whether the plot belongs to the family of the Applicant alone or if it jointly owned by the family of the Respondent as well in equal shares. Since this dispute cannot be resolved by way of this motion, I do not have sufficient material to resolve that critical issue.

Secondly, it seems that the same suit property is the subject of a pending succession cause No. E479 of 2024. There are other concluded suits which may have made decisions concerning the suit plot. I do not know all the outcomes of the disputes. This means that these proceedings may not give finality to the dispute.
6. For the above stated reasons, I dismiss the motion dated 19-7-2024 with costs to the Respondent.

It is ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 5TH DAY OF MAY, 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Applicant's Counsel – Mr T.M. Njoroge

Respondent's Counsel – Mr Gitonga

