



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Margaret Nyawira Maina (Deceased) (Succession Cause  
149 of 1997) [2025] KEHC 760 (KLR) (3 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 760 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 149 OF 1997  
JM NANG'EA, J  
FEBRUARY 3, 2025  
IN THE MATTER OF THE ESTATE OF THE LATE  
MARGARET NYAWIRA MAINA (DECEASED)**

**BETWEEN**

**PETER NJOROGE MWANGI ..... ADMINISTRATOR**

**AND**

**ANDERSON GICHO NGANGA ..... 1<sup>ST</sup> INTERESTED PARTY**

**JANE MUTHONI GACHATHI ..... 2<sup>ND</sup> INTERESTED PARTY**

**JAMES OPONDO MANYURU ..... 3<sup>RD</sup> INTERESTED PARTY**

**RULING**

1. This ruling follows the Administrator's Notice of Motion dated 18<sup>th</sup> April 2024 seeking reliefs as hereunder;
  - a. Spent
  - b. Spent
  - c. Spent
  - d. An order of eviction of the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties from a parcel of land known as Kiambogo Settlement Scheme /348 to be effected by the OCS, Elementaita Police Station.
2. By Affidavit in support of the Motion, the Administrator contends that the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties are in unlawful occupation of the above described parcel of land comprising the estate of the deceased thereby interfering with its distribution to beneficiaries. The court is told that there is urgent need for determination of ownership of the stated land in the circumstances.



3. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties oppose the application vide their joint affidavit in reply. They attack the application as premature for the reason that Grant of Letters of Administration herein are yet to be confirmed. They aver that the administrator has failed to involve them and other beneficiaries of the estate in discussions as to its distribution. The 1<sup>st</sup> Interested Party claims to have bought part of the land in question from a son of the deceased called Maina Gacharu who is also now deceased. The said Maina Gacharu's widow is also said to have surrendered part of the same land to the 2<sup>nd</sup> Interested Party in lieu of a debt owed to her. The two Interested Parties state that they are in occupation of their respective portions of the land.
4. The Administrator chose not to make submissions while the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties filed written submissions through their advocates. The other parties to the matter did not react to the application.
5. Firstly, the 1<sup>st</sup> and 2<sup>nd</sup> Interested Party submit that the application is not supported by evidence as the affidavit in support thereof is not shown to have been witnessed by a Commissioner for Oaths as required in law. Secondly, it is argued that an eviction order cannot issue as an interim relief in these proceedings. Citing various cases including *Julius Martin v Caleb Arap Rotich* [2021] eKEEL 195 (KLR), Counsel submit that any challenge against their clients should be mounted in a civil suit sine they are claiming ownership of land comprising the estate.
6. I have considered the application and the response thereto. I have also studied the file. My brother Justice A. K. Ndung'u in the ruling of 20<sup>th</sup> June 2019 found that the Interested Parties did not unlawfully purchase the land for the reason that the purported purchase occurred before Grant of Letters of Administration has been confirmed and therefore bordered on intermeddling with the estate. The court therefore declined the grant an order of temporary of injunction to the Interested Parties.
7. Regarding this application, indeed the Administrator's affidavit is not witnessed by the Commissioner for Oaths contrary to the requirement of the law. It is not therefore an affidavit recognized in law and consequently, this application is not supported by any evidence. It is thus for striking out which I hereby do with no order as to costs.
8. As observed in the Interested Parties' submissions this court sitting as a Succession Court may not have jurisdiction to entertain an application for eviction orders. Such reliefs should be sought from the Environment and Land Court with the necessary pecuniary jurisdiction. The Interested Parties are also advised to protect their interests in any such suit and not in this Cause which only involves the beneficiaries of the deceased's estate. The Interested Parties were also so advised by my brother Justice H. M. Nyaga on 5/6/2024.
9. In order to complete this long pending matter, the Administrator is directed to move to confirm the Grant of Letters of Administration issued to him without further delay.

**J. M. NANG'EA**

**JUDGE.**

**RULING DELIVERED THIS 3<sup>RD</sup> DAY OF FEBRUARY, 2025 IN THE PRESENCE OF:**

Administrator present in person

Advocate for 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties, Ms Karuga

3<sup>rd</sup> Interested Party, absent

The Court Assistant (Jeniffer)



**J. M. NANG'EA, JUDGE.**

