



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Nguru Githuba (Deceased) (Succession Cause 1832 of 2006)
[2025] KEHC 3313 (KLR) (Family) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3313 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 1832 OF 2006

HK CHEMITEI, J

MARCH 20, 2025

IN THE MATTER OF THE ESTATE OF THE LATE NGURU GITHUBA (DECEASED)

BETWEEN

DAVID KIMANI KIRIGA 1ST APPLICANT

GRACE WANJIKU KIRIGA 2ND APPLICANT

ISAAC NGURU KIRIGA 3RD APPLICANT

MARY WANJIRU KIRIGA 4TH APPLICANT

AND

DAVID NJOROGE NGURU 1ST RESPONDENT

SARAH NJERI WAITHANJI 2ND RESPONDENT

RULING

1. In their application dated 26th July 2023 the Applicants are seeking orders that:-
 - (a) This court be pleased to annul the letters of administration dated 27th October 2006 and confirmed on 1st April 2009 for material non-disclosure.
 - (b) This court do issue an order that the Applicants be included as creditors to the estate of the deceased herein and be paid out of the estate a sum of Kshs.8,401,444 owed to the estate of Kiriga Githuba.
2. The application is based on the sworn affidavit of David Kimani Kiriga dated the same date as well as the grounds thereof.



3. The gist of the application is that the deceased herein had a joint venture business with his late brother and the father to the Applicants Kiriga Githuba.
4. The parties after the demise of the deceased entered into a family deed of settlement dated 26th September 2016. This was between the administrators of the estate of the deceased and the late Kiriga Githuba.
5. The said Kiriga Githuba passed on thereafter and the Applicants took out letters of administration.
6. Part of the deed of settlement was to the effect that Kiriga Githuba was to be paid a sum of Kshs.4,500,000 once a property was sold. It is the averments of the Applicants that indeed a sale was undertaken on 6th July 2017 by the Respondents but they failed to honour the agreement.
7. They were then forced to move to court where they obtained a decree for a sum of Kshs.8,401,444 and which they claim from the deceased estate. They argue that at the time of confirming the grant the Respondents were aware of the debt.
8. For the above reason the said grant ought to be revoked and or they be considered as creditors to the estate.
9. The 1st Respondent filed grounds of opposition and the replying affidavit both dated 17/10/23. He argued that the said debt could not be attributed to the estate as it came way after the grant had been confirmed.
10. That the reasons given by the Applicants cannot stand as they do not qualify under Section 76 of Cap 160.
11. On the civil case at the lower court, he stated that the same was obtained ex-parte and he had moved to have the decree set aside. He thus prayed for the application to be dismissed.
12. The court directed the parties to file their submissions which they have complied. The same mirrors the issues raised in the rival affidavits and the court does not wish to reproduce the same here.
13. The issue that was well captured by the parties is whether in light of the deed of settlement the above debt can be attributed to the estate.
14. I have perused the same and it appears that the Respondents signed it as administrators of the estate of the deceased herein. They did not sign in their personal capacity.
15. Having done so, they cannot therefore turn around and deny that the deceased owed his brother the aforementioned debt. It was agreed under the terms of the deed of settlement that the properties of the late Nguru Githuba shall devolve to Mary Njoki Nguru who was then a joint administrator with the 1st Respondent.
16. If the parties did not intent to deal with the said deed of settlement in the manner, they did then the Respondents would not have come in as administrators of the estate. They would have dealt with it on individual basis or capacity.
17. Having stated so I do not think the claim herein should warrant the cancellation of the grant. There is no evidence as rightly submitted by the Respondents that by the time the grant was confirmed such a debt had accrued. They did not fail therefore to disclose any liability.
18. However, the best approach is to take the liability as a debt to the estate. Although it came way after the deceased had passed on and after the grant had been confirmed it is not lost to this court that the deed of settlement clearly spelt out the intention of the two deceased brothers.



19. The question of whether the decree was illegally obtained is for the Respondents to take up with the relevant court. For now, it still stands until the same is stayed or set aside by the issuing court. It remains a valid decree as far as this ruling is concerned.
20. In the premises the application is allowed as hereunder:-
- (a) The estate of the late Nguru Githuba herein is indebted to the estate of the late Kiriga Githuba to a tune of Kshs.8,401,444 as per the decree dated 23rd June 2023 in *Civil Case No. E134 of 2024 Milimani Chief Magistrates Court Commercial Division*.
 - (b) The grant herein confirmed on 1st April 2009 be rectified so as to include the above sum as a liability.
 - (c) Costs of this application to the Applicants.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 20TH DAY OF MARCH 2025.

H K CHEMITEI

JUDGE

