



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Simon Nduru Kariuki (Deceased) (Probate & Administration
3 of 2025) [2025] KEHC 3032 (KLR) (Family) (17 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3032 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
FAMILY
PROBATE & ADMINISTRATION 3 OF 2025
KW KIARIE, J
MARCH 17, 2025
IN THE MATTER OF THE ESTATE OF:
SIMON NDURU KARIUKI**

BETWEEN

DAVID GITAHI NDURU PETITIONER

AND

JOEL WAWERU KARIUKI PROTESTOR

AND

JANE WAIRIMU MATHENGE PURCHASER

RULING

1. Jane Wairimu Mathenge & 37 others, the applicants herein, moved the court by way of summons dated the 1st day of August 2024. The application was brought under Rule 49 of Probate and Administration Rules & Article 159 (2) (b) of the [Constitution](#) of Kenya. They are seeking the following grounds:
 - a. That an order be issued compelling the respondent, David Gitahi Nduru, to immediately surrender the original title deed for Nyandarua/Leshau /Mbuyu Block 2 (Karai)/152 to enable sub-division and subsequent transfer to the respective beneficiaries.
 - b. That alternatively, an order do issue that the County Government Surveyor's and the Land Registrar's requirement for parties to produce the original title deed for Nyandarua/Leshau/ Mbuyu Block 2 (Karai)/152 by applicants be dispensed with.



- c. That an order to issue compelling the respondent to execute all the sub-division and transfer documents for Nyandarua/Leshau/Mbuyu block 2 (Karai) 152 and, in default, the Deputy Registrar to authorized to sign.
 - d. That the respondent does pay the costs of this application
 - e. That this honourable court be pleased to issue any other order that it may deem just and expedient in the interest of justice.
2. The application was premised on the following grounds:
- a. That this court delivered a judgment in this cause on 13th October 2022 and further issued a certificate of confirmation of grant on the same day in which the applicants are entitled to 38 plots.
 - b. That since confirmation of the grant, the applicants have tried everything within their efforts to have the respondent surrender the original title deed, but he has adamantly refused to surrender the same for subdivision.
 - c. That the refusal by the respondent to surrender the original title deed for Nyandarua/ Leshau/ Mbuyu block 2 (Karai)/152 has made it impossible to carry out subdivision and/or any further transaction.
 - d. That the act of the respondent to remain with the original title deed is illegal and thus calls for the Court's intervention.
 - e. That the court ought to consider the age of the dispute herein as the suit was filed almost 8 years ago, and it is thus necessary that this court grant the orders sought to ensure the applicants enjoy the fruits of the judgment.
 - f. That this court should not issue orders in vain, and there is a need to bring this matter to an end and to avoid a situation where the parties may be forced to shuttle back and forth between this court and the office of the Land Registrar.
 - g. That it is fair and just that is application be allowed as prayed as there is no prejudice that there will occasioned to the respondent.
3. The petitioner/respondent opposed the application on the following grounds:
- a. The applicants are not parties to the succession cause.
 - b. The applicants do not appear in the certificate of confirmation as beneficiaries of Simon Nduru Kariuki's estate.
 - c. The application is an abuse of the court process.
4. Form P. & A. 5 lists eighteen purchasers who have been described as beneficiaries. Jane Wairimu Mathenge does not appear among them. However, the judgment of this court dated 13th October 2022 recognized the existence of purchasers and confirmed the grant to that effect. Failure to name each purchaser cannot defeat the judgment in their favour.
5. The contention that the purchasers were not party to the succession cause is erroneous.
6. I find that the application is merited and allow it in terms of prayers (a) to (d).

DELIVERED AND SIGNED AT NYANDARUA THIS 17TH DAY OF MARCH 2025.



KIARIE WAWERU KIARIE
JUDGE

