



REPUBLIC OF KENYA



**In re Estate of Joram Kigia (Deceased) (Succession Cause 1073 of 2001)
[2025] KEHC 6992 (KLR) (Family) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6992 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1073 OF 2001
SN RIECHI, J
MAY 22, 2025**

BETWEEN

MICHAEL KUNGU KIGIA & 7 OTHERS APPLICANT

AND

JOSEPH KARUGA KIGIA & 5 OTHERS RESPONDENT

RULING

1. This matter relates to estate of Joram Kigia(Deceased) who died intestate on 13th October 2019 domicile in Kiambu County.Following Deceased demise a grant of letters of administration were issued to Joseph Karuga Kigia on 19th July 2001 as the Administrator of the estate. The grant was confirmed and a certificate of confirmed grant issued to the Administrator on 10th July 2023.
2. The applicants have now moved this court by a Notice of Motion dated 3rd July 2024 filed pursuant to Order 5,Rule 3 of Civil Procedure Rules,2010,Succession Act 160,Section 3 and Sections 3A of the [Civil Procedure Act](#), Constitution of Kenya 2010,Bill of rights, the Applicants sought the following orders;
 1. Spent
 2. That this Honorable Court do issue an order to stop all subdivision on land parcel known as Gatamaitu/Nyanduma/192 and Ngenya plot No. 1 until this case is heard and determined due to irregular and illegal acts of administrator Joseph Karuga Kigia.
 3. That after Honorable Court issues Order No.1 AND 2 this Court does issue an order to stop SUB-divisions of land parcel No Gatamaitu/Nyanduma/192 and Ngenya plot No.1 and order District Land Survey of Kiambu to stop any Act on the land.



4. That this Honorable Court do issue an order the District land Registrar the Kiambu to stop any registration of land parcel title deeds on Gatamaitu/Nyanduma/192 until the matter is heard and all agents appointed by administrator Joseph Karuga Kigia until this case is heard and finally determined.
 5. That this Honorable Court do issue an order for administrator to provide audited report of the deceased Tea estate funds since 2001 to date 2024 and deposit the funds to Court or Court do order an A/C be opened for the distribution of funds frannded by the defendants
 6. That this honorable Court do issue an order against agencies, administrator and defendants to produce received monthly payments of deceased estates since year 2001 and rental rents on shops up to date be allocated to all deceased.
 7. That this Honorable Court is requested to issue an order against all defendants to account for the Deceased account Tea estate money and shops rents money up to dates 2024 failure to which shall forfeit their equal share of land parcel Gatamaitu/Nyanduma/192 and Agency PLOT No.1 due to fraud without a court order.
 8. Costs of this application be condemned on defendants
3. The application is predicated upon grounds stated on the face of it and an affidavit in support sworn on even date by the applicant Michael Kungu Ikigia . The grounds of the application are as follows;
- i. The Administrator to provided audited report of the deceased estate since year 2001 to 2024 and refund the funds of the Tea estate and rental shops as defendants frauded. ii. None of six (6) daughters ever received any funds from the estate and if any let the administrator prove.
 - iii. No sub-division of the land parcel Gatamaitu/Nyanduma/192 and Plot No. Ingenya
 - iv. Administrator is adamant corrupt and has frauded the estate without a court order since 2001 with the defendants
 - v. The Plaintiffs herein has proper plan of the lands as with of the deceased before death
 - vi. Defendants should consider plaintiffs as their brothers and sisters to share equal share of the land in 14 beneficiaries rent no as adopted by Administrator
4. The applicants in the supporting affidavit reiterated grounds of the application and briefly stated the administrator and the defendants fraudulently took over the diseased tea estate and rental shops as defendants frauded. The administrator and defendants have sidelined the deceased 14 beneficiaries since year 2001 to 2024.
 5. The applicants stated further that administrator and the defendants fraudulently took over deceased tea estate and millions of monies since 2001 to 2024 and audited reports should be produced before the court and all the funds be refunded.
 6. The applicants deposed that the subdivision of the land Gatamaitu/Nyanduma/192 and Plot No. Ingenya should not be subdivide until this matter is heard and determined.
 7. The applicants stated that inhibition on land parcel no Gatamaitu/Nyanduma/192 and Plot No. Ingenya need to be issued until this matter is heard and dismissed.
 8. In response, the respondent/administrator filed his replying affidavit sworn on 22nd November 2024 denying the allegations of fraud, corruption and sidelining any family members in the distribution. The administrator deponed that he called a meeting before the sub division and tabled cost of subdivision



in the sum of Kshs.311,000 and all the family members turned up and they agreed except the applicant who failed to attend the meeting. The respondent deposed that he was authorized to pay surveyor as evidenced by attached to the application a copy of a cheque and receipts.

9. The administrator deponed further the family members noted that after the payment to the surveyor, the funds in the bank account were exhausted and agreed that each person pays from their pocket Kshs 15,000 for the processing of individual titles. That 6 members of the family already have their titles and he has Kshs.75,000 from a further 5 members who paid but they are yet to ballot for their plots on the ground. The administrator deponed that the Application has absolutely no merit and the same is an afterthought and filed in bad faith. He deponed that the Applicant has not received any authority to act on behalf of any of the Applicants named in the application and as such he is acting without authority and antagonizing the other family members.
10. The administrator averred that a grant of letters of administration was made to me in this matter on the 19th day of July 2001 however the same was not confirmed until on 10th July, 2024. The administrator filed an application for confirmation of grant on 31st October, 2018 and the confirmation was delayed for almost 5 years because the Applicant herein Michael Kungu Kigia had filed an application for injunction and production of audited accounts against him which application was rightly dismissed by the court on 24/10/2019.
11. The administrator stated that the Applicant ought to have appealed if he was aggrieved by the order of dismissal but not to bring a similar application 5 years later. The administrator stated further the Applicant presented himself to court and confirmed that he was agreeable to the mode of distribution of the estate prior to the confirmation of grant. The administrator averred that as a family they had discussed and agreed that the deceased land namely Gatamaiyu /Nyanduma/192 and Plot Number 1 Ngenya be shared equally between their late father's two families and it was obvious that upon subdivision of the land the 1st family would get larger portions because they are only five (5) against their mother's house that has 9.
12. The administrator deponed that the applicant's application has been overtaken by events and court cannot issue orders of injunction and inhibition on title number Gatamaiyu /Nyanduma/192 as the title is non-existent having been closed on subdivision.
13. This application was canvassed by way of written submission. The applicant filed undated written submissions in person. The administrator filed written submissions dated 22nd April 2025 through the firm of Jean Kiarie & Company Advocates.
14. The applicant in his submissions reiterated averments in his affidavit. He briefly submitted further that this court do allow the application to stop the injustice netted the administrator to the deceased estate. The applicant prayed that this court do remove the Petitioner who is 80 years and cannot access the whole family and order objector to be allowed to Act on the remaining issues of proper subdivisions of Land and Petitioner be ordered to refund over Kshs.1 million he sold trees and money that was in the account of the estate.
15. The administrator in his submissions reiterated averments in his affidavit. The Petitioner's Advocate submitted further that the Objector had filed similar applications dated 4/11/2018 and 4/11/2019 which applications were dismissed by the court on 24/10/2019 & 3/4/2023.
16. The Petitioner submitted that the Applicant had previously requested for audited accounts which were provided and the court declared them unreasonable. His application was dismissed and the court ordered the Petitioner to proceed with confirmation of grant. It was the petitioner's submissions that the applicant did not prefer an appeal and when he was served with the application for confirmation of



grant, he personally attended court with his Original Identity Card and confirmed to court that he was agreeable to the mode of distribution. The Petitioner submitted the present application has no basis, the same is an afterthought and filed in bad faith.

17. The objector submitted his matter has been in court for a long period of time and this protracted litigation must come to an end. He submitted the family land has since been subdivided, mother title closed on subdivision and new numbers issued. The Petitioner submitted that some of the beneficiaries have their respective title deeds and the process has been costly and tedious. The petitioner submitted the Applicant is asking the court to order the cancellation of the titles and appoint him as an administrator.
18. The petitioner submitted the issues raised by the Applicant were heard by this court and his application was found to be frivolous and his application was dismissed. It was submitted that the Applicant did not move to the Court of Appeal to challenge the decision of this court and this court cannot sit on appeal of its own judgement.
19. I have considered the application herein, responses by the respective parties and submissions by the objector and Petitioner. I have also considered the case law in support. The main issue arising for determination is whether this court should grant the orders sought.
20. From the application the applicant is seeking orders to stop sub-division of land parcel Gatamaitu/ Nyanduma/192 and Ngenya Plot No.1 due to illegal and irregular acts of administrator Joseph Karuga Kigia. The applicant is also seeking orders for inhibition on the subject properties and orders for production of accounts in respect of deceased estate. The applicant submitted the administrator has irregularly divided the parcels in illegal manner and $\frac{1}{4}$ acres for each $\frac{1}{6}$ for each 2nd house while equal share is denied showing serious hatred. The applicant submitted the court can only correct the error and issue equal share to all 14 children.
21. The applicant submitted that the administrator has taken over the Deceased tea estate of millions of money since 2001 to 2024 and audited report need to be produced before court and all funds refunded.
22. The petitioner on his part submitted the applicant consented to the mode of distribution during confirmation of grant. The petitioner submitted the applicant never appealed against the decision on the confirmation and therefore the orders he is seeking is an abuse of court process. The respondent submitted the applicant has filed a similar application for injunction and production of audited accounts against him which application was dismissed by court on 24.10.2019.
23. The Petitioner submitted that the objector had earlier sought similar prayer for production of account but the court ruled it was untenable and dismissed the application.
24. On whether this court should stop sub-division of subject properties and issue inhibition order. I have perused the record and I note that the Grant in respect of deceased estate was confirmed and a certificate of confirmation of Grant dated 10th July 2023 was issued to the Administrator to administer the estate. I also note that the objector herein participated in the proceedings in respect of this cause. I have perused the Certificate of Confirmation of Grant and I find the objector Michael Kungu Kigia share of the subject property has been provided under the second house.
25. The administrator herein proceeded and administered the estate after been issued with the confirmed Grant. Indeed, the petitioner has submitted and confirmed to court that the properties have already been subdivided and some of the beneficiaries have already acquired their share of estate and even title deed. The administrator also confirmed that the titles number =s of land parcel Gatamaitu/ Nyanduma/192 and Ngenya have been closed and title deed numbers issued upon subdivision. I



therefore, find that issuing the orders of injunction and inhibition in respect of the subject properties at this stage is untenable because the estate has already been administered and the Objector share was provided for under the second house. The orders sought have been overtaken by event and the same cannot be granted by this court.

26. On issue whether the petitioner should be ordered to file audited report for accounts in respect of the deceased estate for funds of deceased Tea Estate since 2001 to 2024. The objector herein did not raise issues in respect of funds at tea estate belonging to deceased and rental income from the shops before the confirmation of Grant. The order to furnish and render account in respect of the tea estate should be raised before confirmation of Grant which the objector failed to do so. Having set the above the order to ask administrator to provide audited report of the tea estate funded and rental income on shops up to date is declined.
27. In conclusion it my finding that the application dated 3rd July 2024 is disallowed and is hereby dismissed.
28. No order as to costs.

DATED AT NAIROBI THIS 22ND DAY OF MAY 2025.

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S.N.RIECHI

JUDGE

