



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Kagunyi Ruoro (Deceased) (Succession Cause
E002 of 2023) [2025] KEHC 6589 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6589 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
SUCCESSION CAUSE E002 OF 2023**

FN MUCHEMI, J

MAY 15, 2025

**IN THE MATTER OF THE ESTATE OF KAGUNYI RUORO
ALIAS SOLOMON NGUGI RUORO ALIAS SOLOMON KAGUNYI
RUORO ALIAS NGUGI RUORO (DECEASED)**

RULING

Brief facts

1. The executors of the will filed a Summons for Confirmation of Grant of Probate dated 20th February 2025. However, a caveat dated 6th December 2024 was lodged by one Peter Kamau Njoroge on 10th December 2024. The caveator essentially opposes the confirmation of the grant on LR No. Chania/Kanyoni/1232 on grounds that he is the registered proprietor of the land. The caveator avers that the purpose of the caveat is to have the said property taken out of the list of the properties listed as part of the estate to enable actual ownership to be determined by the Environment and Land Court.
2. The executors of the will filed a Replying Affidavit dated 29th January 2025 and argue that the suit land parcel belongs to the deceased for he had bought it and transferred it in his name in the year 1987. The executors denied allegations of fraud between the deceased and the Ministry of Lands officials to transfer the land to the deceased.
3. The executors state that the caveator's claim does not lie in the present court and also that the claim is time barred under the *Limitation of Actions Act*.
4. Parties put in written submissions.

The Caveator's Submissions

5. The caveator submits that he holds the title deed of the suit property and is uncertain as to how the property was listed as forming part of the estate of the deceased for the deceased did not purchase it from him. The caveator argues that it is trite law that the properties that ought to be listed as part of the estate should only include free property actually belonging to the deceased person. The caveator further submits that he is well aware that the succession court does not deal with matters related to



land but argues that the deceased acquired the suit property through fraudulent means. To support his contentions, the caveator relies on the case of *Muriuki Marigi vs Richard Marigi Muriuki & 2 Others* [1997] eKLR and submits that only properties owned by the deceased at the time of death form part of the estate.

The Executors' Submissions

6. The executors argue that the official search and green card show that the suit property belongs to the deceased and has further been included in his will. The search shows that the deceased became the registered owner of LR. No. Chania/Kanyoni/1232 in the year 1981 as shown in the green card, which is 44 years ago yet the caveator did not protest for that whole period. The executors argue that the caveator's remedy does not lie in the succession court but in the environment and land court where he can prove that he is the registered proprietor of the suit property.
7. The executors further submit that an action to recover land should be brought within 12 years. As such the claim of the caveator is time barred under the Limitations of Actions Act.

The Law

8. Rule 15(9) of the Probate and Administration Rules provides:-

Where it appears to the principal registrar that an application has been made in any registry for the making of a grant to the estate of a deceased in regard to which a caveat has been lodged and is subsisting, the principal registrar shall send a notice in Form 112 to the caveator warning him of the making of the application and notifying him that if he wishes to object to the making of the proposed grant, he must pursuant to the provisions of Section 68(1) of the Act, lodge such objection in the principal registry within thirty days, or such longer period as the registry for reasons to be recorded may allow, from the receipt of such notification, in default of which the caveat shall cease to have effect with respect to the making of such grant.

9. The record shows that the caveator lodged his caveat on 6th December 2024 but did not file an objection to the grant within the 30 days period required. However the issue raised by the caveator touches on the jurisdiction of the court. Jurisdiction is everything and without it a court has no power to make one more step in the relevant proceedings.
10. The probate court derives its jurisdiction from {the {>/akn/ke/act/2010/constitution Constitution}} and the *Law of Succession Act*. This principle was enunciated in the case of the *Estate of M'Murianki M'Mngwika (Deceased)* [2019] eKLR where the court held that:-

The *Law of Succession Act* and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate identification of survivors and beneficiaries and distribution of the assets.

11. Similarly in the case of *Priscilla Ndubi and Zipporah Mutiga vs Gerishon Gatobu Mbui*, Meru Succession Cause No. 720 of 2013, the court held:-

“The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus, where



issues of ownership of the property of the estate are raised in a succession cause, they must be resolved before such property is distributed. And that is the very reason why rule 41(3) of the Probate and Administration Rules was enacted so that claims which are prima facie valid should be determined before confirmation.”

12. Applying the above principles to the present case, it is clear that the bone of contention goes to the ownership of land parcel number Chania/Kanyoni/1232. The caveator claims that he is the registered proprietor of the said land parcel whereas the executors of the will of the deceased state that the deceased purchased the suit land and transferred it to himself. The executors of the will further claim that they have been residing on the suit property for over 37 years without any interruptions.
13. Pursuant to Article 165(5) of {the {>/akn/ke/act/2010/constitution Constitution}}, this court lacks jurisdiction in matters relating to and occupation of, and title to, land. It is also apparent that when a dispute regarding ownership in respect of the property of a deceased person arises, such land dispute ought to be determined before distribution is done. Alternatively, the court can set aside the share in dispute to await the outcome of the land case by the court with jurisdiction. As such, the dispute as to ownership can only be determined by the Environment and Land Court. It is not in dispute that this court lacks jurisdiction to determine the dispute on ownership of the property in question. It is therefore prudent to await resolution of the land ownership dispute to be determined by the Environment and Land court because parties are already before the said court. Thereafter, the probate court can proceed to distribute the said property to the rightful beneficiaries.
14. The deceased left a will dated 6th May 2022. The will was signed by the deceased and witnesses by two (2) witnesses whose particulars of names, identity card numbers and phone numbers are indicated in the will. Following the application for confirmation of grant of probate. This will was not disputed by any of the beneficiaries. The said will bequeathed the deceased’s properties whose particulars are given therein to the beneficiaries whose particulars are given in the will indicating the beneficiaries full names.
15. Having considered the will of the deceased and the caveat by Peter Kamau Njoroge I hereby allow the objection of the caveator and put on hold the distribution of L.R. No. Chania/Kanyoni/1232 pending the determination of the dispute before the Environment and Land Court.
16. The deceased having left a valid will which is not disputed by any of the beneficiaries, I hereby direct that the properties of the deceased listed in the said will except LR Chania/Kanyoni/1232 be and are hereby distributed among the beneficiaries as per the will of the deceased dated 6th May 2022 and in the Summons for confirmation of grant dated 20th February 2023.
17. A certificate of confirmation of grant of probate to issue.
18. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 15TH DAY OF MAY 2025.

F. MUCHEMI
JUDGE

