



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Mithang'a Ngunyura (Deceased) (Succession Cause
268 of 1996) [2025] KEHC 6035 (KLR) (13 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6035 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 268 OF 1996**

SM GITHINJI, J

MAY 13, 2025

IN THE MATTER OF THE ESTATE OF MITHANG'A NGUNYURA (DECEASED)

BETWEEN

IRENE MUCHECHE KITHINJI 1ST APPLICANT

NANCY KATHANG'A HENRY 2ND APPLICANT

AND

PETER KIAMBI M'MUTHAMA RESPONDENT

RULING

1. For determination is the Notice of Motion dated 10/12/2024 brought under Articles 40 and 159 of the Constitution, Order 51 Rule 1 of the Civil Procedure Rules and Sections 3 and 3A of the Civil Procedure Act, seeking orders that:
 1. Spent
 2. Pending the hearing and determination of this application inter-partes, this honorable court be pleased to grant an order restraining the Respondent by themselves, their agents or servants, employees or any other assigns or representatives from constructing permanent structures on land parcel number Abogeta/L-Kiungone/1976-1982.
 3. Pending the hearing and determination of this application inter-partes this honorable court be pleased to grant an order restraining the Respondent by themselves, their agents or servants, employees or any other assigns or representatives from forcefully evicting the applicants from land parcel number Abogeta/L-Kiungone/1976-1982.
 4. Costs of this application be provided for.



2. The application is supported by the affidavit sworn by Irene Mucheche Kithinji, the 1st Applicant herein, and the wife to a son of the deceased herein namely Francis Kithinji, who died on 17/11/2014. She alleges that, after the demise of her husband, the Respondent used falsified records to fraudulently subdivide land parcel No. Abogeta/L-Kiungone/1976-1982 and is in the process of disposing it to third parties. On or about 8/12/2024, the Respondent in the company of goons attempted to forcefully evict them from the said land and severely wounded the 2nd Applicant when she protested, which assault was duly reported at Ntharene Police Station under OB No. 04/08/12/2024. They have since been left destitute, and unless the orders sought are granted, the Respondent will proceed to execute the decree rendering the application nugatory.
3. In opposing the application, the Respondent swore a Replying Affidavit on 20/1/2025 in which he deposed that the application was incompetent because it had been filed by an advocate who was not properly on record for the Applicants. He and Francis Kithinji (deceased) were cousins and grandchildren of the deceased herein, and by the order dated 12/8/2020 and the subsequent certificate of confirmation of grant dated 29/10/2020, he was given 0.90 Ha of L.R No. Abogeta/Lower Kiungone/1046 while Francis Kithinji got 0.12 Ha thereof as per the earlier consent order dated 1/7/2008. After the subdivision of the land into L.R No. Abogeta/L-Kiungone/1922 and 1923 measuring 0.116 Ha and 0.869 Ha respectively, he was issued with title deed to L.R No. Abogeta/L-Kiungone/1923 on 16/7/2024 while L.R No. 1922 was left in the name of the late administrator awaiting the processing of his own succession proceedings. He subsequently subdivided his parcel No. 1923 into 1976-1982 to share with his siblings and put them in possession of their respective portions of the land, but the late Petitioner's parcel No. 1922 remains intact and his family resides there. He prays for the dismissal of the application with costs, because the order of 12/8/2020 as amended on 29/10/2020 has never been reviewed or set aside on appeal.
4. The application was canvassed by written submissions which were duly filed by counsel for both parties.

Disposition.

5. I have considered the application, the replying affidavit, the submissions by counsel and the authorities relied on.
6. The sole issue for determination is whether the Applicants have made out a case warranting grant of the injunctive reliefs sought.
7. Before I delve into the merits of the application, the application is said to have been filed by an advocate who is not properly on record for the Applicants. I note the Notice of Change of Advocates dated 10/12/2024 where the Applicants duly instructed the firm of S.K Adagala & Co. Advocates to duly represent them. Therefore, the contention that the application is incompetent is misconceived and unfounded.
8. On the merits, order 40 Rule 1 of the [Civil Procedure Rules](#) provides that; “Where in any suit it is proved by affidavit or otherwise - a. That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongly sold in execution of a decree; or b. That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”



9. The principles for grant of injunction as stated in *Giella v Cassman Brown* [1973] EA 358 are that; i. an applicant must show a prima facie case with a probability of success. ii. an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. iii. If the court is in doubt, it will decide an application on the balance of convenience.
10. The basis upon which the injunctive orders are sought by the Applicants is the Respondent's alleged fraudulent subdivision of L.R No. Abogeta/L-Kiungone/1976 -1982 and subsequent sale to 3rd parties.
11. In its judgment dated 5/10/2017, this court (A Mabeya J) found that the Respondent was indeed a beneficiary of the estate of the deceased by virtue of being his grandson, and he thus had an equal right as the 1st Applicant's husband, to petition for the grant of letters of administration. In conclusion, the court gave 0.12 Ha of L.R No. Abogeta/L-Kiungone/1046 to the 1st Applicant's husband, Francis Kithinji (now deceased) while the Respondent herein got 0.90 Ha thereof, pursuant to a consent order dated 1/7/2008. That judgment of the court was neither reviewed nor appealed against, and thus it is still in force.
12. Evidently, the contention by the Applicants that the Respondent is a stranger to these proceedings is far from the truth.
13. I find that the Applicants have not established a prima facie case with a probability of success, to warrant grant of the orders sought. In any event, I find that the issuance of the orders sought will arbitrarily interfere with the Respondent's rightful entitlement to freely utilize the estate of his deceased grandfather, without any lawful justification whatsoever, which is abhorred by the provisions of Article 40 of the Constitution.
14. Besides, the eviction orders were issued on 12/8/2020 as follows; "(v) An order of eviction be and is hereby issued against the petitioner, the interested parties and all and any other person (s) in occupation of part of Abogeta lower Kiungone/1046 Parcel Nos. 1391 and 1392 within 60 days from the date hereof."
15. Given the foregoing considerations, I find that the application is without merit and it is hereby dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED THIS 13TH DAY OF MAY, 2025.

S.M. GITHINJI

JUDGE

Appearances:-

Mr. Adagala for the Applicant.

Ms. Kajuju for the Respondent.

