



REPUBLIC OF KENYA



KENYA LAW
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**Gakuru v Mbugua & 4 others (Miscellaneous Application
E003 of 2025) [2025] KEHC 7872 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 7872 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
MISCELLANEOUS APPLICATION E003 OF 2025**

TW OUYA, J

JUNE 5, 2025

BETWEEN

EDITH WANJIRU GAKURU APPLICANT

AND

PETER NJOROGE MBUGUA 1ST RESPONDENT

SAMSON NJUGUNA MBUGUA 2ND RESPONDENT

NELSON THUO MBUGUA 3RD RESPONDENT

ANN WANJA JOHN 4TH RESPONDENT

LYDIA NJERI KIMANI 5TH RESPONDENT

RULING

1. Before court is an application which was filed under certificate of urgency for summons for revocation or annulment of Grant. The application dated 4th day of April 2025 was filed by the Applicant Edith Wanjiru Gakuru against 5 Respondent who are deponed to be her siblings.
2. The application seeks for orders inter alia that:
 - a. That this application be certified urgent and service be dispensed with in the first instance.
 - b. That pending the hearing and determination of this suit, this Honourable court be pleased to issue an order of inhibition, inhibiting any dealings with land parcel number Loc. 5/ Githunguri/254, either be way of transfer, sale, lease, charge or otherwise.
 - c. That pending the hearing and determination of this suit, this Honourable court be pleased to issue an injunction restraining the Respondents whether by themselves, their agents/ employees/servants/or anyone claiming through them from entering, trespassing, occupying,



taking possession or in any other way interfering with the Applicant's and her other siblings' families quiet possession, occupation and use of land parcel number Loc. 5/Githunguri/254.

- d. That this Honourable Court revokes the grant of letters of administration issued on the 2nd Respondent on 18th July 2022 and confirmed on 19th March 2025 before Hon. R.N Kimeu in Kandara MCSUCC/E175/2022 (In the Estate of Evans Mbugua Njoroge).
3. The instant application is supported by an affidavit sworn by the said Edith Wanjiru Gakuru, applicant deponing inter alia that she is the eldest child of the deceased Evanson Mbugua Njoroge and that the deceased upon his death on 16th October 1983 was survived by his wife Josephine Wambui Mbugua(deceased) and siblings 4 of whom are since deceased namely: Mary Nyambura Mbugua, Albert Ndungi Mbugua, Timothy Kamau Mbugua and Joseph Ng'ang'a Mbugua. That upon his demise, Albert Ndungi Mbugua was survived by his five children and his wife/widow Lydia Njeri Kimani, the 6th Respondent herein.
4. The application is premised on allegations of fraud/mischief on the part of Respondents whom the applicant alleges are colluding with 3rd party buyers some of whom have issued eviction notice to the current occupants. The applicant urges court to intervene as some of the family members stand to lose their share of the estate.
5. The applicant depones further that the respondents consented to a petition of letters of administration intestate with the 2nd respondent as the Administrator. The same was relied upon for petition for letters of administration intestate together with supporting affidavit by the respondents.
6. The applicant has further attached a copy of the Succession Cause which was filed by the Respondents at Kandara Law Courts, the supporting affidavit and letter from the chief dated 26th April 2024. She also has attached a copy of text message from one Kamau Muhiu to a 'Bwana Mbugua' threatening an eviction within 7 days.
7. It is the applicant's averment that the respondent's actions are in bad faith and meant to defeat, frustrate and violate the applicants and her deceased's siblings' family's interest in the land parcel No. Loc. 5/ Githunguri/254.
8. The matter was first before court under certificate of urgency on 12th April 2025, which court granted orders that: parties to be served and to appear for mention for directions on 23rd April 2025.
9. On 23rd April 2025, Mr Gathura appeared for the applicant while there was no appearance for the Respondents. Mr Gathura informed court he has served the parties and filed an affidavit of service dated 17th April 2025. I have gained sight of the said affidavit of service and I am satisfied that the respondents were served. In their absence, counsel moved the court for the orders to be granted as prayed.
10. The application before court seeks for far reaching orders in the nature of inhibition and injunction which are essentially restraining orders against the Respondents. The application is supported by a 37 paragraph affidavit of the Applicant deponing serious allegations against the Respondents.
11. That the respondents consented to a petition of letters of administration intestate with the 2nd Respondent as the Administrator. That the same was relied upon for petition for letters of administration intestate together with supporting affidavit by the Respondents. That based on the above documents, the 2nd Respondent was issued the letters of administration vide MC Succ 175/2022. The grant of letters of administration dated 18th July 2022.
12. It is deponed that some of the beneficiaries who were left out in the grant have since received threats from strangers indicating that they have purchased part of the parcel.



13. I have carefully considered the application before the court together with the supporting evidence. What is in issue before this court is whether the application has merit and whether the orders prayed should be granted.
14. The Applicant craved an injunction restraining the Respondents from interfering with the occupation of the suit property by other members of the deceased's family.
15. Section 13 of the *Environment and Land Court Act* which provides as hereunder:
- “(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to the environment and land.
- (2) In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes –
- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- (b) relating to compulsory acquisition of land;
- (c) relating to land administration and management;
- (d) relating to public, private, and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- (e) any other dispute relating to environment and land.”
16. The Court holds and finds that it lacks the jurisdiction to issue an injunction restraining the Respondents from interfering with the Applicant and other members of the deceased family from occupying and utilizing the suit property as sought, it being a matter reserved exclusively for the Environment and Land Court pursuant to the provisions of Section 13 of the *Environment and Land Court Act*. Accordingly, the prayers numbered (b) and (c) in the Applicant's Application dated 4th April 2025 is dismissed as it falls outside the Court's jurisdiction.
17. It is noteworthy that the respondents were served but failed to file any response to this application thereby rendering it unopposed.
18. The Court is persuaded that the Applicant has demonstrated the presence of mischief on the part of the respondents in processing the succession cause while leaving out some of the beneficiaries, particularly, the children to their late brothers, ALBERT NDUNGI MBUGUA, TIMOTHY KAMAU MBUGUA and FRANCIS NGANGA MBUGUA.
19. Section 76 of the *Law of Succession Act*, stipulates as follows:
- “A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—
- (a) that the proceedings to obtain the grant were defective in substance;



- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.”

20. The land parcel in question, Loc 5/Githunguri/254 is ancestral land and all the deceased’s children and their children have a right as beneficiaries to the estate. The applicant has therefore made a case for this court’s intervention.
21. The Court is alive to the fact that the Respondents are in the process of selling and/or transferring part of the parcel of land in question and that there are already threats of eviction by third parties to some of the beneficiaries and occupants.
22. In the premises, this court finds that the application has merit and proceeds to grant interim orders as follows:
- a. The grant of letters of administration issued in the 2nd Respondent’s name dated 18th July 2022 and confirmed on 19th March 2025 before Hon. R.N Kimeu in Kandara MCSUCC/E175/2022 is hereby revoked.
 - b. The subject cause is hereby transferred to the Environment and Land Court for hearing and determination.
 - c. To preserve the subject-matter of the current dispute, the Court hereby forbids the alienation/disposal/transfer of the suit land pending transfer of the subject suit to the Environment and Land Court for determination”.

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 5TH DAY OF JUNE, 2025.

HON. T. W. OUYA

JUDGE

