



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Mutuku Nyaga (Deceased) (Succession Cause
240 of 2013) [2025] KEHC 8949 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8949 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 240 OF 2013
MA ODERO, J
JUNE 20, 2025
IN THE MATTER OF THE ESTATE OF MUTUKU NYAGA (DECEASED)**

BETWEEN

FRANCIS MACHARIA KARANJA APPLICANT

AND

HANNAH MICHERE GITHAKA RESPONDENT

RULING

1. Before this Court for determination is the Summons dated 17th January 2025 by which the Applicant Francis Macharia Karanja seeks the following orders:-
 - “1. Spent
 2. That this Honourable Court be pleased to join Francis Macharia Karanja as an interested party in this cause.
 3. That the costs of this Application be provided for.”
2. The application which was premised upon section 47 and 93 of the *Law of Succession Act* Cap 160, Laws of Kenya and Rules 49 and 73 of the *Probate and Administration Rules* was supported by the affidavit of even date sworn by the Applicant.
3. The Respondent Hannah Michere Githaka opposed the application through her Replying Affidavit dated 5th February 2025.
4. The matter was canvassed by way of written submissions. The applicant filed the written submissions dated 26th February 2025 whilst the Respondent relied upon her written submissions dated 24th February 2025.



Background

5. This succession cause relates to the estate of the late Mutuku Nyaga (hereinafter ‘the Deceased’) who died intestate on 30th November 1972.
6. Following the demise of the Deceased one Cyrus Nyaga Njagi (the Respondent) representing himself as a ‘son’ to the Deceased sought and obtained Grant of letters of Administration Intestate which Grant was issued on 19th November 1996.
7. The said Grant was duly confirmed on 11th February 1998. According to the confirmed Grant the entire estate comprising of one asset being the property known as LR Mwerua/Kagi/195 was to devolve to the Respondent absolutely.
8. Thereafter the Applicant Hannah Michere Githaka who was the biological daughter of the Deceased filed a Summons dated 26th February 1999 seeking to have the Grant which had been issued to the Respondent revoked.
9. The summons for revocation of Grant was duly heard by the High Court and vide a judgment delivered on 12th July 2024, the Court found that the Respondent had obtained the Grant fraudulently by misleading the trial court and by failing to disclose material facts. Accordingly the Grant issued was revoked.
10. The Applicant herein then filed this present application seeking to be enjoined as an interested party in this succession cause. The Applicant avers that he is a bonafide purchaser for value having purchased the estate property from Cyrus Nyaga Njagi. That he has sub-divided the property and sold off several plots to third parties. The Applicant pleads that he is likely to suffer irreparable harm if his prayers are not granted.
11. As stated earlier the application was opposed.

Analysis and Determination

12. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties.
13. The Applicant has sought to be enjoined in this succession cause as an interested party. A person may be enjoined as an interested party in a legal proceeding when they have a stake in the matter or may be affected by the decision of the court.
14. The procedure for joinder of an interested party is provided for by Rule 7 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules* commonly referred to as ‘the Mutunga Rules’
15. Rule 1 of the ‘*Mutunga Rules*’ provides that

“Interested party” – means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.”



16. In *Trusted Society of Human Rights Valuance v Mumo Matemu 65 others* [2014] eKLR the Supreme Court of Kenya stated as follows:-

“.....an interested party is one who has a stake in the proceedings though he or she was not party to the cause ‘ab initio’. He or she is one who will be affected by the decision of the court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings and champions his or her cause...”

17. Having stated as above it must be remembered that one cannot demand to be enjoined in a legal proceeding as of right. Sufficient basis must be valid to warrant the enjoinder of a party in a legal suit.

18. In the case of *Francis Karioko Muruatetu & another v Republic & 5 others* [2016] eKLR the Supreme Court of Kenya set out the principles which would apply for joinder as an interested party as follows:-

“(37) From the foregoing legal provisions and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party”-

One must move the court by way of a formal application. Enjoinder is not as of right, but is at the discretion of the court, hence sufficient grounds must be laid before the court on the basis of the following elements:-

- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough to stand apart from anything that is merely peripheral.
- ii. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.
- iii. Lastly a party must, in its application, set out this case and/or submissions it intends to make before the court and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely replication of what other parties will be making before the court....”

19. This court is sitting as a Probate/Succession Court. The duty of a Probate Court is to supervise, and oversee the distribution of the estate of an deceased person to the genuine beneficiaries.

20. It must be remembered that this is a succession cause. The obvious question that would arise is whether the Applicant has locus standi in this succession cause. Locus Standi is a latin term which literally means ‘place of standing’ and refers to the right of a person to be heard in a particular matter.

21. In a succession cause the only persons who would have proper locus standi would be the beneficiaries, and the creditors and/or debtors of the estate. The Applicant is none of the above. As such the Applicant has no locus standi in this succession cause.

22. The Applicant’s claim is that he is bonafide purchaser for value of property (asset) which belongs to the estate of the Deceased. That claim cannot be ventilated under this succession cause. The proper



forum for the Applicant to pursue his claim to the said property is the Environment and Land Court (ELC) which has been set up under Article 162 of the *Constitution* of Kenya 2010.

23. Section 13 of the *Environment and Land Court Act* provides that it is only the ELC that has the mandate to determine issues relating to “ownership, use and occupation” of land. Therefore the Applicant can only pursue his claim to ownership of the suit property in the ELC.
24. As it is by virtue of the judgment delivered on 12th July 2024 the Grant which was issued to the person from whom the Applicant claims he purchased the land stands revoked. That judgment has not been overturned on appeal neither has it been reviewed. The land in question reverts back to the estate of the Deceased and all actions done under cover of that illegal Grant are null and void.
25. Moreover the same question of joinder was considered by the High Court where vide a ruling delivered on 30th March 2017, Hon. Lady Justice Mshila in rejecting the application for joinder found and held inter alia as follows:-

“Further there is need to state that there are issues that may have to be adjudicated in the Environment and Land Court.....”

26. The question of who between the Applicant and the estate of the Deceased is the genuine ‘owner’ of the suit land can only be determined in the ELC and is not a matter for this Probate Court to decide upon.
27. Accordingly I find that the Applicant cannot be said to be an interested party in this succession cause. His claim to ownership of the suit land can only be heard and determined by the Elc. *Re Estate Of Stone Kathubi Muinde (Deceased)* [2016] eKLR Hon. Justice William Musyoka held that:-

‘Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before Civil court in accordance with the provisions of the *Civil Procedure Act* and the *Civil Procedure Rules*. This could mean filing suit at the magistrates’ courts, or at the Civil or commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant then such decree should be presented to the Probate Court in the succession cause so that court can give effect to it [Own emphasis].

28. The Applicant is also at liberty to file suit against the said Cyrus Nyaga Njagi to recover his money.
29. Finally I find no merit in this application for enjoinder. The same is hereby dismissed in its entirety. Costs to be met by the Applicant.

DATED IN NYERI THIS 20TH DAY OF JUNE 2025

.....

MAUREEN A. ODERO

JUDGE

