



REPUBLIC OF KENYA



**In re Estate of Ng'ang'a Goro (Deceased) (Succession Cause 578 of 1993)
[2025] KEHC 8157 (KLR) (Commercial & Admiralty) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8157 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
SUCCESSION CAUSE 578 OF 1993
HK CHEMITEI, J
JUNE 12, 2025**

BETWEEN

LUCY GATHONI 1ST APPLICANT

MILICENT WAITHERA 2ND APPLICANT

AND

WAMBUI KANGETHE 1ST RESPONDENT

GORO NG'ANG'A GORO 2ND RESPONDENT

RULING

1. This ruling relates to the application dated 17th October, 2022 filed by Lucy Gathoni seeking for ORDERS THAT:-
 1. Spent.
 2. Pending the hearing and determination of this summons, this honourable court be and hereby stays proceedings in KIKUYU ELC NO. E087 OF 2021: WAMBUI KANG'ETHE VS. LUCY GATHONI & MILLICENT WAITHERA.
 3. Pending the hearing and determination of this summons, this honourable court be and hereby issues an order that the suit property herein being parcel of land PLOT NUMBER 19XX6/X4 be preserved and the status quo in respect thereof be maintained by all the parties herein to wit the 1st and 2nd Respondents whether by themselves and/or their representatives, servants and/or agents be and are hereby restrained from evicting, dealing in whatsoever manner and/or otherwise interfering with the 1st and 2nd Applicants occupation of parcel of land PLOT NUMBER 1XXX6/X4.



4. The grant of administration intestate issued to Goro Ng'anga Goro and further rectified on 28th June, 2021 be and is hereby revoked and/or annulled and all consequential orders and processes limited only to the distribution of Plot Number 19XX6/X4 to the 1st Respondent herein as opposed to the 1st and 2nd Applicants herein.
 5. Any other or further orders and/or directions as this honourable court deems just and expedient including but not limited to the revocation of the grant issued herein.
 6. The costs of this Application be in the cause.
2. The application is based on the grounds on the face thereof and supported by affidavit sworn by Lucy Gathoni on 17th October, 2022.
 3. She avers inter alia that she has sworn the affidavit on behalf of both herself and her sister, Millicent Waithera, the second Applicant. Millicent and George Kamau were initially granted letters of administration intestate over the deceased's estate, with the grant confirmed on 1st November, 2004. This confirmed grant was subsequently rectified multiple times - on 11th March, 2013, 6th December, 2016, 2nd September, 2019 and 12th November, 2019.
 4. That each of these rectifications recognized the Applicants as joint owners in equal shares of L. R. No. 19XX6/X4, which had originally been purchased from Daudi Goro. The plot was formally transferred to the Applicants via a transfer dated 19th April, 2021, executed by the sole surviving administrator, Goro Ng'ang'a. This transaction was registered under I.R. 10XX25/X6 and recorded at the Nairobi Land Titles Registry on 30th April, 2021. A certificate of title was then issued on the same date, naming the Applicants as lessees for a 50-year term beginning 1st April, 2005.
 5. She deponed that they have had possession of the land since 1996 and have significantly developed it by constructing approximately 30 residential rental units.
 6. Subsequently, Wambui Kang'ethe the 1st Respondent filed a summons dated 26th April, 2021, seeking to rectify the grant issued to Millicent Waithera by reallocating L. R. No. 19XX6/X4 to herself, to the detriment of the Applicants. Wambui failed to serve this application on the Applicants or notify any other beneficiaries of the estate. Her application was based on a letter dated 18th August, 2020, in which she falsely claimed that the grant awarding the plot to the applicants was due to a clerical error.
 7. In support of her application, Wambui submitted a fraudulent consent form dated 26th April, 2021, containing the names of individuals who were neither legally entitled to consent nor connected to the estate, furthering the alleged fraud. Notably, she excluded the estate's administrator from the rectification proceedings.
 8. However, and despite these issues, the court issued a new certificate of confirmation of grant on 28th June, 2022. Following this, Wambui initiated legal proceedings vide Kikuyu ELC No. E087 of 2021: Wambui Kang'ethe vs. Lucy Gathoni & Millicent Waithera, seeking to be declared the rightful owner of L.R. No. 1XXX6/X4.
 1. Top of Form
 2. Bottom of Form
 9. The application is opposed vide replying affidavit sworn by Wambui Kang'ethe on 30th June, 2023 where she avers inter alia that Millicent Waithera never authorized Wambui Kang'ethe to swear an affidavit on her behalf, and there's no proof to support such authority. A grant was issued and later



corrected, but the Applicants were wrongly included in the rectified grants despite not being rightful beneficiaries of the estate.

10. The estate's property was distributed per a ruling by Justice E. M. Githinji, which allocated the disputed land, L.R. No. 1966/24, to the deceased's first house, not to the Applicants. This ruling remains valid and unchallenged. Upon discovering the Applicants' names were erroneously included in the corrected certificate of confirmation of grant dated 2nd November, 2019, Waithera's lawyers contacted the estate administrator, Goro Ng'ang'a Goro, for clarification on 30th October, 2019, but received no response.
11. Since their inclusion was illegal and unprocedural, any actions taken based on that inclusion are invalid. Waithera, as a rightful beneficiary, acted within her rights to seek legal remedies without needing approval from the administrator or the Applicants, who are strangers to the estate and a corrected certificate of confirmation of grant dated 28th June, 2021 properly redistributed the disputed property to her.
12. That she then formally asked the Applicants, on 12th August, 2021, to vacate and remove any structures they had built on the land. When they didn't comply, she filed Kikuyu ELC No. E087 of 2021: Wambui Kang'ethe vs. Lucy Gathoni & Millicent Waithera to assert her legal ownership.
13. She deponed that the Applicants have not shown valid grounds for revoking the 2021 grant or for staying the legal proceedings, as the probate court's role is limited to distributing assets, not resolving property ownership issues. Therefore, Kikuyu ELC No. E087 of 2021: Wambui Kang'ethe vs. Lucy Gathoni & Millicent Waithera case is appropriate and necessary.
14. Having summarized the above affidavit evidence I find that the issues are convoluted noting the age of the matter.
15. There are serious questions regarding how the Applicants came to be part of the grant considering the proceedings before Githinji J (as he was) and why the name of the respondent was missing.
16. More importantly is how the Applicants came to be registered as proprietors of the impugned parcel of land.
17. I have perused the proceedings of 25th November 2022 where the court (Odero J) had directed that the matter do proceed by way of oral evidence.
18. In my view this is the correct position so that the above issues and more other grey areas can be sorted out.
19. In the premises the application herein be heard by way of oral evidence.
20. The parties each granted 30 days to file and serve any witness statement, if any.
21. Meanwhile let there be stay of proceedings in KIKUYU ELC E087 OF 2021 WAMBUI KANG'ETHE V. LUCY GATHONI & MILLICENT WAITHERA pending the hearing and determination of this cause.
22. Costs in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 12TH DAY OF JUNE 2025.

H K CHEMITEI

JUDGE

