



**Ndegwa & another v Githaiga; Githaiga (Beneficiary) (Succession Cause E103 of 2021) [2024] KEHC 4196 (KLR) (4 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4196 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE E103 OF 2021  
HI ONG'UDI, J  
APRIL 4, 2024**

**BETWEEN**

**SAMUEL GICHUKI NDEGWA ..... 1<sup>ST</sup> APPLICANT**

**LILIAN NJERI NGUGI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**AGNES GITHAIGA ..... RESPONDENT**

**AND**

**GEOFFREY KAMU GITHAIGA ..... BENEFICIARY**

**RULING**

1. In the Summons dated 19<sup>th</sup> September 2023 by the Interested parties/applicants herein prays for the following orders;
  - i. That an injunction does issue barring the administrator from interfering with the applicants' quiet use and possession of a portion of 14 acres comprised in title No. Solai/Ndungiri Block 7/4 Gitwamba, being purchasers for value thereof pursuant to sale agreements dated 3<sup>rd</sup> January, 2023 and 27<sup>th</sup> April, 2023, and beneficially owned by Geoffrey Kamau Githaiga pursuant to a confirmed grant.
  - ii. That the administrator to be compelled by this honourable court to sign and/or execute all the requisite documents for subdivision and transmission of 7.665 Hectares to be excised from Solai/Ndungiri Block 7/4 Gitwamba and in default this honourable court authorize the Deputy Registrar to sign and/or execute the requisite documents for such transmission to the due beneficiary pursuant to a certificate of confirmed grant dated 98 June, 2022, and to pave



way for completion of the sale agreements dated 3<sup>rd</sup> January, 2023 and 27 April, 2023 in respect to 14 acres thereof.

iii. That in the alternative, the court be pleased to Order the rectification of the Grant to include the applicants herein as beneficiaries of 14 acres from the property known as Solai/Ndungiri Block 7/4 Gitwamba, and for transmission thereof to the applicants in a manner to be directed by the honorable court in respect to execution of the relevant documents.

iv. That the costs of the application be provided for,

2. The application is based on the grounds on its face and the affidavit of the 1<sup>st</sup> applicant sworn on even date. He deposed that there existed two separate agreements one dated 3<sup>rd</sup> January, 2023 and the other dated 27 April, 2023. That vide the said agreements, they purchased a total of 14 acres from the 2<sup>nd</sup> respondent herein which was to be excised from all that parcel of land known as Solai/Ndungiri Block 7/4 (Gitwamba) measuring 30.66 hectares. The 2<sup>nd</sup> respondent who was a beneficiary of the said property was entitled to a portion measuring 7.665 hectares.
3. He deposed further that the confirmed grant did not bar any of the beneficiaries from disposing of their share of the aforementioned property. He added that it was prudent for the court to intervene and call for the title for purposes of subdivision and transfer of individual portions to the beneficiaries as per the grant. This would pave way for them obtaining title to the 14 acres of land they had purchased once the administrator signed the relevant documents.
4. In response to the application the respondent filed a replying dated 12<sup>th</sup> February 2024. She averred that this court lacked jurisdiction to entertain the instant application since the subject matter was land and not succession. Thus, the same should be directed to the Environment & Land Court for determination. She added that the subject land known as Solai/Ndungiri Block 7/4 Gitwamba could not be unilaterally sub-divided without the prior consent of all beneficiaries and express the involvement of the administratrix.
5. She averred further that she had filed an application seeking rectification of Grant in the interest of the estate. Thus, the present application had been brought in bad faith to pre-empt legal distribution of the estate property. She added that the beneficiaries had agreed on not selling any individual interest in land or property devolved to them to third parties without giving the other beneficiaries priority. She urged the court to dismiss the instant application and order the applicants to stop interfering with the administration of the estate.
6. The interested parties/applicants in response to the respondent's replying affidavit filed a further affidavit dated 14<sup>th</sup> February 2024. The 1<sup>st</sup> applicant deposed that the administrator had not denied that they had indeed purchased 14 acres from the subject property from the beneficiary herein. Further, that the administrator had cultivated the entire 75 acres, and refused to engage the other beneficiaries and a surveyor to conclude the exercise.
7. The application was disposed of by way of written submissions.
8. The applicants opted to file a list of authorities, the same was filed by the firm of Wairimu Gathi Advocates and are dated 14<sup>th</sup> February 2024.
9. The respondent's submissions were filed by Waiguru Njuguna Advocates and are dated 21<sup>st</sup> February 2024. Counsel submitted that the applicants' application lacked merit and the same was an abuse of



the court process. He placed reliance on the case of *Isaac Ngatia v Paul Kaiga Gitbui* [2017] eKLR. He urged the court to dismiss the applicants' application with costs.

### **Analysis and Determination**

10. I have considered the application, affidavits together with the submissions and authorities filed by the parties herein. This court having perused its entire record notes that the interested parties/applicants herein did not file any application for enjoinder as interested parties and therefore they lack the capacity to participate in these proceedings.
11. In support of the above position, I rely on the Supreme Court case of *County Assembly of Mandera County v Governor, Mandera County & Another* [2020] eKLR where it was held as follows;  

“ 10] Having considered the said prayer, we unanimously find that a party yet to be enjoined in a matter such as the present reference, lacks the capacity to seek any substantive orders in it and that the prayer aforesaid is premature, the prayer for dismissal of the reference is consequently struck out”
12. Secondly – there is already a confirmed grant herein where the deceased's estate has been distributed to the beneficiaries. The party the “applicants” are claiming from is a beneficiary to the deceased's estate. Their claim cannot therefore be entertained in this succession cause, as they are not beneficiaries to the deceased's estate. Let them file it before the proper court.
13. The upshot is that the application dated 19<sup>th</sup> September, 2023 lacks merit and is hereby dismissed with costs.
14. Orders accordingly

Delivered virtually, this 4<sup>th</sup> day of April, 2024 in open Court at Nakuru

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**H. I. ONG'UDI**

**JUDGE**

Page 2 of 2

