



**In re Estate of Stephen Kimani Gachanga (Deceased) (Succession Cause 32 of 2019) [2024] KEHC 10358 (KLR) (8 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10358 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 32 OF 2019  
SM MOHOCHI, J  
AUGUST 8, 2024**

**IN THE MATTER OF THE ESTATE OF STEPHEN KIMANI GACHANGA (DECEASED)**

**BETWEEN**

**ELIUD KIBIU KIMANI ..... APPLICANT**

**AND**

**LILIAN NJERI NJIHIA ..... RESPONDENT**

**RULING**

**Introduction**

1. The Deceased Stephen Kimani Gachanga died intestate on the 30<sup>th</sup> August 1993 at Wanyororo, he left behind Serah wambui Gachanja, George Kimani Nduta, Hannah Wanjiku Njogu, Eliud Kabi Kimani and Allan Njihia Kimani.
2. A petition for issue of a grant intestate was filed by Serah wambui Gachanja and Eliud Kabi Kimani on the 1<sup>st</sup> August 2019 listing the following assets of the deceased and no liabilities;
  - i. Nyahururu/Leshan Mbuyu Block 2/245
  - ii. Naivasha/Maraigushu Block 11/218.
  - iii. Plot No. 215 at Karai Allocated by Karai F. Co-operative Society Limited.
  - iv. A Plot A Kwa Kungu Allocated by Karai F. Co-operative Society Limited.
  - v. Shares at Co-operative Society of Kenya.
  - vi. Ndalani Settlement Scheme Phase 1/474

Total Estimated Value Kenya Shillings Thirty Million (Kshs, 30,000,000)



3. A grant of Letters of Administration intestate was made and issued to Serah wambui Gachanja and Eliud Kabiui Kimani on the 30<sup>th</sup> September 2019 and a Summons for confirmation of grant was filed on the 22<sup>nd</sup> October 2021 and the same remains pending determination.
4. The Summons before Court dated 19<sup>th</sup> September 2023 is filed pursuant to Section 47 and 46 of the Law of Succession Act and Sections 44(1), 49, 63(2) and 73 of the Probate and Administration Rules Order 40 rules 1, 2 and 3 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act and all other enabling provisions of the Law seeking inter alia the following relief(s).
  - i. Spent
  - ii. That, Pending the hearing of this application inter-partes, this Honourable Cour be pleased to restrain the Respondent by herself, servants, agents and/o employees from further dealing with and preserve the property of the lat Stephen Kimani Gachanga namely Naivasha/Maragushu/Block 11/21measuring 7.5 acres.
  - iii. That, Pending the hearing of the main cause, this Honourable Court be pleas to grant an injunction restraining the Respondent by herself, servants, and/or employees from further dealing with, selling, wasting, transferring and/or otherwise interfering with the property of the late Stephen Kimani Gachanga namely: Naivasha/Maragushu/Block11/2 measuring 71/2 acres.
  - iv. That, the property namely Naivasha/Maragushu/Block 11/218 be include the Deceased's estate for purposes of distribution.
  - v. That the costs of this Application be provided for.
5. On the 18<sup>th</sup> September 2023 this court certified the same as urgent, issued a temporary, a temporary injunction restraining the Respondent, their servants' agents, from dealing with, wasting, selling transferring the property of the deceased Naivasha/Maraigushu/Block 11/218 Pending the hearing of the application interpartes. Applicant was directed to serve application on the Respondent. Inter partes hearing was scheduled for 17<sup>th</sup> November 2023.
6. Advocate David K Gichuki entered Appearance on behalf of the Respondent on the 16<sup>th</sup> November 2023 and has not complied with any of the directives of the court or appeared before court when the matters were coming up for mention and hearings.
7. This Ruling was reserves on the 23<sup>rd</sup> April 2024 where the Applicant in the absence of the Respondent indicated compliance by filing his written Submissions.
8. The Applicant herein is a Co-Administrator and the Respondent Lilian Njeri Njihia is the wife to Allan Kimani Njihia an elder son to the deceased who is also deceased.
9. The Applicant contends that he filed an application for confirmation of grant which came to court on several occasions but the Respondent failed to attend court or sign the consent and that she, together with her late husband Allan Kimani Njihia illegally colluded and took possession of one of the Deceased's property's namely Naivasha/Mariagushu/Block 11/218 measuring 7.5 acres and they even went ahead and obtained a title deed of the said property illegally before succession process commenced.
10. That Unless the Respondent herein is restrained from further dealing with the suit property the same will be at risk of being wasted, damaged, transferred, sold and/or being put beyond the Applicants' reach.



11. That the Applicant will be grossly prejudiced if this application is not allowed.
12. That the Intransigence and lack of cooperation by the Respondent is upon realization of the intermeddling and its consequences.

### **Analysis and Determination**

13. This Motion is uncontested and the court is persuaded that the late Allan Kimani Njihia without the color of law, illegally and criminally intermeddled fraudulently transferring and taking possession of one of the Deceased's property's namely Naivasha/Mariagushu/Block 11/218 measuring 7.5 acres.
14. That the Purported entry no 5 on the title dated 24<sup>th</sup> September 2009, transferring Naivasha/Mariagushu/Block 11/218 to the late Allan Kimani Njihia was unlawful, illegal without the sanction of this court as the deceased assets were subject to the law of succession from the 30<sup>th</sup> August 1993.
15. This Court is accordingly persuaded on the merits of the Summons dated September 19, 2023 and allow the same on the following terms;
  - i. An Order Injunction restraining Lilian Njeri Njihia by herself, servants, and/or employees from further dealing with, selling, wasting, transferring and/or otherwise interfering with the property of the late Stephen Kimani Gachanga namely: Naivasha/Maragushu/Block11/2 measuring 7.5 acres is hereby issued pending conclusion of the Cause.
  - ii. An Order is hereby issued to the Registrar of lands Naivasha, to forthwith cancel and rectify of All entries made on Naivasha/Maragushu/Block11/2 from the 24<sup>th</sup> September 2009 in the Register, marked as Entries 2, to 3 transferring ownership from the deceased to Allan Kimani Njihia (Deceased) and issuing title and revert back the ownership to Stephen Kimani Gachanga.
  - iii. Summons for Confirmation of Grant dated 21<sup>st</sup> October 2021 is allowed.
  - iv. The Grant of letters of administration intestate dated September 30, 2019 is hereby confirmed.
  - v. The Estate of the deceased shall be distributed as is proposed in the Mode of distribution as follows;



Naivasha Maraigushu Karai Block 11/2181	<ul style="list-style-type: none"> <li>i. Serah Wambui Gachangas 1.75 Acres</li> <li>ii. Eliud Kabiu Kimani 1.5 Acres</li> <li>iii. Hannah Wanjiku Njogu 1.5 Acres</li> <li>iv. Lilian Njeri Njihia 1.5 Acres</li> <li>v. George Kimani 1.5 Acres</li> </ul>
Nyahururu/Leshan Mbuyu Block 2/245	<ul style="list-style-type: none"> <li>i. Serah Wambui Gachangas 1.5 Acres</li> <li>ii. Eliud Kabiu Kimani 1.5 Acres</li> <li>iii. Hannah Wanjiku Njogu 1.5 Acres</li> <li>iv. Lilian Njeri Njihia 1.5 Acres</li> </ul>
Plot A Kwa Kungu Allocated by Karai F. Co-operative Society Limited.	<ul style="list-style-type: none"> <li>i. Serah Wambui Gachangas</li> <li>ii. Eliud Kabiu Kimani</li> <li>iii. Hannah Wanjiku Njogu</li> <li>iv. Lilian Njeri Njihia.</li> </ul> <p>(Jointly in equal shares)</p>
Plot No. 215 at Karai Allocated by Karai F. Co-operative Society Limited	<ul style="list-style-type: none"> <li>i. Serah Wambui Gachangas</li> <li>ii. Eliud Kabiu Kimani</li> <li>iii. Hannah Wanjiku Njogu</li> <li>iv. Lilian Njeri Njihia.</li> </ul> <p>(Jointly in equal shares)</p>
Shares at Co-operative Society of Kenya.	<ul style="list-style-type: none"> <li>i. Serah Wambui Gachangas</li> <li>ii. Eliud Kabiu Kimani</li> <li>iii. Hannah Wanjiku Njogu</li> <li>iv. Lilian Njeri Njihia.</li> </ul> <p>(Jointly in equal shares)</p>
Ndalani Settlement Scheme Phase 1/474	<ul style="list-style-type: none"> <li>i. Serah Wambui Gachangas</li> <li>ii. Eliud Kabiu Kimani</li> <li>iii. Hannah Wanjiku Njogu</li> <li>iv. Lilian Njeri Njihia.</li> </ul> <p>(Jointly in equal shares)</p>

16. Parties shall bear their own costs, this being a family matter.



17. The Administrators are to conclude the distribution of the afforested assets within six (6) months from today.
  18. Mention to confirm distribution and settlement of the estate shall be on the 4<sup>th</sup> February 2025
- It is So Ordered.

**SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 8<sup>TH</sup> DAY OF AUGUST 2024.**

**MOHOCHI S. M.**

**JUDGE**

