



In re Estate of Johanna Waitete Macharia (Deceased) (Succession Cause 1 of 2017) [2024] KEHC 10864 (KLR) (19 September 2024) (Ruling)

Neutral citation: [2024] KEHC 10864 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
SUCCESSION CAUSE 1 OF 2017
CM KARIUKI, J
SEPTEMBER 19, 2024**

IN THE MATTER OF THE ESTATE OF JOHANNA WAITETE MACHARIA DECEASED)

BETWEEN

GRACE WANJIKU WAITETE APPLICANT

AND

NAOMI WANJA WAITETE RESPONDENT

RULING

1. By an application dated 28/7/2022, the applicant seeks:
 - a. In the first instance, Joseph Njoroge be substituted for Rodah Wanjiku Waitete solely for the purposes of winding up the estate herein.
 - b. That the estate of the deceased herein be retributed among the three houses of the late Johanna Waitete.
 - c. That all the third parties who are beneficiaries of the illegal sale and transfer of the estate property by the Respondent (Naomi Wanja Waitete) be enjoined to these proceedings and they be at liberty to file any affidavits and show cause why the conveyances in their favor should not be revoked.
 - d. That is the alternative, the Respondent herein (Naomi Wanja Waitete) be ordered to pay to the applicant's house a sum of money equivalent to the value of the share of the estate which the applicant's house was bequeathed.
 - e. That cost of this applicant be borne by the Respondent herein.
2. It is supported by grounds.



- a. The estate of the late Johanna Waitete comprised, among other things, a parcel of land known as NYANDARUA/OL-KALOU SOUTH/53. The deceased sold 1.6 hectares to one Stephen Mwangi Wachira. The parcel of land was, therefore, issued with a different title number, NYANDARUA /OL-KALOU SOUTH /1187, measuring 18.9 hectares.
 - b. Upon his demise, the dependents herein filed this succession cause, and the estate was eventually shared equally among the three houses. Consequently, each house got one-third of the land, equivalent to 6.3 hectares.
 - c. The Respondent, with the full knowledge that the estate had been shared equally among the three houses, filed another succession cause, obtained a grant, and vested the entire estate to herself. She later sold portions of the land to third parties and vested other portions to her children.
 - d. The conduct of the Respondent is patently illegal, and the transfers to third parties are a consequence of an illegality and/or corrupt scheme. The same cannot stand the scrutiny of the law. However, the beneficiaries of those transactions should be granted permission to appear in court to have their day in court.
3. The facts support the application in an affidavit of Joseph Njoroge, who was sworn on 28/7/2022.
- a. THAT the late Rodah Wanjiku Waitete was my mother and one of the widows of the late Johanna Waitete. The estate of the late Johanna Waitete was distributed before the death of my mother. Upon my mother's death, I applied and was issued a grant of letters of administration limited for the purposes of pursuing the winding up of the estate. Annexed hereto is a copy of the letters of administration marked JN-1.
 - b. THAT I pray that I be substituted as an administrator and/or a representative of the house of the late Rodah Wanjiku Waitete solely for the purposes of winding up the estate.
 - c. The estate of the late Johanna Waitete was distributed on 19th September 1990, and in a nutshell, the entire estate was divided equally among the three households. My mother's house got one-third of the net intestate estate. Annexed hereto is a copy of the certificate of confirmation marked JN-2.
 - d. That the prime asset of forming the net estate was the parcel of land known as Nyandarua/ol-kalou South/53, at the time of the distribution of the estate, the parcel of land had been subdivided and given two numbers: Nyandarua/ol-kalouSouth/1187 and Nyandarua/ol-kalouSouth/1188. The parcel of land forming part of the net estate was Nyandarua/ol-kalou South/ 1187, measuring 18.9 hectares. Consequently, each of the three households was entitled to land measuring 6.3 hectares. Annexed hereto is a copy of the green card marked JN-3.
 - e. That with the full knowledge that the deceased was survived by three widows and that the estate had been distributed to the three households, the Respondent filed another succession cause. She identified her house as the sole beneficiary of the estate of the deceased and proceeded to distribute the estate to herself and her children.
 - f. That on 30th June 2016, Grace Wanjiku Waitete, the second widow of the deceased, filed an application seeking orders, among other things, that the Respondent be ordered to give an account of how the estate was distributed. Annexed hereto is a copy of the application marked JN-4.



- g. That it was at that point that the Respondent filed a replying affidavit and stated that she filed a petition for letters of administration using the office of the public trustee. The petition was number 10 of 2011, whereby she obtained a grant of letters of administration and proceeded to share the estate, excluding the other houses. Annexed hereto is a copy of the replying affidavit marked JN-5
 - h. In the face of that disclosure, Grace Waitete filed a second application seeking, among other things, that the subdivisions of the parcel of land herein be nullified, the transfer of the shares be set aside, and the distribution proceeds on the basis of the confirmation of grant herein above attached. Annexed hereto is a copy of the application marked JN-6.
 - i. In the meantime, and upon the application of Grace Waitete, the land registrar Nyahururu's land registry filed a report on the status of the parcels of land. It became apparent then that some of the subdivisions had been sold to third parties. Annexed hereto is a copy of the report marked JN-7.
 - j. That this court (Honourable Wendoh J) considered the applications and opined that it was premature to grant the same for the reasons that some of the properties were in the names of third parties and that the estate was yet to be wound up. The court directed that parties to commence the winding up of the estate. Annexed hereto is a copy of the ruling marked JN-8.
 - k. That winding up of the estate would necessarily involve a transfer of parcels of land to the respective households. However, some of the parcels of land have been vested in third parties illegally and through a corrupt scheme. It is, therefore, necessary that all the third parties named in the report by the land registrar be enjoined in the proceedings since they may be affected adversely by the orders of the court.
 - l. Further, and as part of winding, all the transfers made in favor of third parties should be nullified since they were done corruptly and illegally. Further, all the shares sold will be accounted for, and the Respondent will be ordered to distribute the proceeds of the sale of the shares at an interest rate of 14%.
 - m. In the alternative, I pray for orders that the value of the one-third share for each of the two houses be valued and the same to accrue as a judgment debt recoverable from the house of the Respondent.
4. The Respondent did not file a replying affidavit to oppose the application but filed a preliminary point of law.
 5. The parties were directed to canvass via submissions, but only the applicant filed. The Respondent only filed a preliminary objection dated 7/6/2023, which had ten grounds.
 - i. That the application and suit are started, redundant, and incurably inept.
 - ii. That the applicant has no locus standi to institute the instant application since the honorable court is functus officio and subsequently lacks the jurisdiction to hear and entertain the application after delivery of the ruling on the 11th of July 2018.
 - iii. That the Honorable Court lacks the requisite jurisdiction to hear and entertain a claim touching on land since the proper forum could have been the Environment and Land Court as properly held by this Honorable Court, vide its ruling mentioned above.



- iv. That the orders sought cannot be granted since the same could adversely affect third parties' purchasers who have not been enjoined in this suit.
 - v. That suit as filed is res judicata the application dated 30th June 2016.
 - vi. The deceased estate was distributed via Nakuru High Court succession cause No.202 of 1988; hence, the redistribution is not legally capable of being effected since the deceased estate was wound up upon distribution.
 - vii. That the applicants have not outlined any proposal for redistribution as requested.
 - viii. That the Summons is fatally defective since the provisions of law cited therein do not warrant the granting of the prayers sought by the applicants as the proper forum is to seek a review of any orders the applicants feel aggrieved against.
 - ix. That the instant application is frivolous, vexatious, and an abuse of the court process; hence, the same is unmerited to warrant the granting of the prayers sought.
 - x. That the application is a gross abuse of the court process, and the orders sought are superfluous and incapable of being granted.
6. Parties were directed to file the submissions to canvass the application but only filed the same.
 7. Applicant Submission
 8. This succession cause was initially filed in Nakuru and serialized as Succession Cause number 202 of 1988. At the time of filing of the cause, there was no high court station in Nyahururu. The same was concluded, and the estate was shared in specific proportions among the three houses that comprise the dependants of the estate. What remained was the distribution of the estate.
 9. As of 2017, when the applicants moved to court, their house had not received its share of the estate. Upon application, the file was transferred to Nyahururu, and the current serial number, Succession Cause number 1 of 2017, was given. The first application that the applicant filed was for the nullification of the subdivision of the parcel of land known as Nyandarua/Ol-Kalou SOUTH/53, nullification of the sale of shares in Kenya breweries, and that third parties who had bought properties from the Respondent be enjoined in the proceedings.
 10. The application was considered, and the court ordered that the estate of the deceased be wound up. The surviving widows were appointed as the administrators of the estate. At the hearing of that application, it emerged that after the conclusion of succession cause number 2002 of 1988, the Respondent surreptitiously filed Succession Cause number 110 of 2011, citing herself as the sole beneficiary of the estate. Using the grant that was issued after that, she appropriated the estate singlehandedly and to the exclusion of the other two widows.
 11. This court, in its ruling dated 11th July 2018, directed that an account be given of the remaining properties.
 12. To this end, the land registrar Nyahururu was directed to report on the fate of the parcel of land known as Nyandarua (ol-kalou South/53. When the report was filed, it emerged that the parcel of land had been subdivided and transferred by or at the instance of the Respondent. The application dated 28th July 2022 was filed pursuant to the court order that an account of the remaining properties be taken and redistributed. With this detailed background, the court has invited the court to consider the application dated 28th July 2022.



13. Merits and competence of the application dated 28th July 2022.
14. The application dated 28th July 2022 seeks a redistribution of the net estate of the deceased. It proceeds from the factual premise that a distribution had already been done, but the Respondent, in total contravention of the certificate of confirmation issued by the court, filed a separate succession case and bequeathed herself the entire estate. She has sold most of the estate assets to third parties. Therefore, these proceedings will have an impact on the third parties.
13. Prayer 3 of the notice of motion respects the rights of the third parties to be heard. Under section 92 of the *Law of Succession Act*, third parties who benefit from a conveyance or a disposition of immovable property are entitled to protection if they can demonstrate that they acted innocently and in good faith. It provides as follows:
 92. Protection of persons acting on representation

Every person making or permitting to be made any payment or disposition in good faith under a grant of representation shall be indemnified and protected in so doing, notwithstanding any defects or circumstances whatsoever affecting the validity of the grant.

Where a grant of representation is revoked, or varied, payments and dispositions made in good faith to a personal representative under that grant before the revocation or variation thereof shall be a valid discharge to the person making the same, and a personal representative who has acted under the revoked or varied grant may retain and reimburse himself in respect of any other person to whom the representation is afterward granted might have properly made:

Provided that a personal representative who so acted shall account for all payments, dispositions, retentions, or reimbursements made by him to the person or person to whom the representation is afterward granted,
15. The applicant has attached a copy of a report filed by the land registrar Nyahururu on 24th November 2016 (see exhibit JN-7). It shows several third parties who purchased subdivisions of the parcel of land known as Nyandarua/ol-kalou South/53 from the Respondent. The third parties purchased the parcels of land based on a fraudulent grant procured by the Respondent in succession cause number 110 of 2011. The Respondent deposed on oath that she filed that succession cause because she never knew of the existence of this succession cause (see exhibit JN-5 at 8 paragraph 8). Prayer number 3 is merited. The affected third parties ought to be enjoined, and they should be allowed to appear in court and demonstrate that they acted in good faith.
16. Prayer number 4 follows the same sequence. The Respondent sold and transferred portions of land, which represented the intestate bequest of the 1st and second house, which the applicant represents. The proviso to section 92 of the *Law of Succession Act* requires that the personal representative render an account of the disposition made using the impugned grant. In the event that the Respondent sold and transferred to the third parties without their knowledge of the illegality, the Respondent ought to render an account and pay the applicant the equivalents of the value of their share of the estate.
17. The factual basis of the application has not been challenged. The Respondent never filed a replying affidavit to controvert the factual assertions made by the applicant. To that extent, the factual basis of the application is not challenged. We rely on the case of *Gulleid v Registrar of Persons and another (Petition E007 of 2021)*, where the court observed that -

As stated earlier, the respondents did not file any replying affidavit to challenge and/or controvert the sworn averment by the petitioners, who said that they were victims of the post-election violence. Grounds of Opposition that were filed are only deemed to address



issues of law. They are general averments and cannot amount to a proper or valid denial of allegations made on oath. (See *Mereka & Co Advocates v Unesco Co Ltd* 2015 eKLR, *Prof Olaka Onyango & 10 others v Hon Attorney General Constitution Petition No 8 of 2014* and *Eliud Nyauma Omwoyo & 2 others v Kenyatta University*). The respondents have failed to refute specifically the allegations in the petitioner's affidavit in support. Failure to file a replying affidavit can only mean that those facts are admitted. Therefore, in the absence of any evidence to the contrary, I find that the petitioners are indeed victims of the 2007/2008 post-election violence.

18. The exact ratio was applied in the case of *Faustina Njeru Njoka v Kimunye Tea Factory Limited* [2022] eKLR
19. The Respondent has filed a notice of preliminary objection. The implication is that she wishes to raise pure points of law. The points raised in the notice of preliminary objection can be summarized as follows: -Want of locus standi,The court is functus officio and lacks jurisdictionThe matter ought to be tried by the environment and land court.The matter is res judicata.
20. Notice of preliminary objection
21. Locus Standi-
22. A challenge on the competence of a suit on the grounds of lack of locus standi proceeds from the premise that the applicant has no property interest in the case and he is not the proper person to file the suit. A challenge on the competence of the court to try a matter on the grounds that it is functus officio proceeds on the basis that the court has rendered itself in finality and there is nothing left for determination. A challenge on Want of jurisdiction addresses the question of the court's legal or constitutional mandate to hear and determine a matter. Therefore, the objection by the Respondent that;

“the applicant has no locus standi to institute the instant application since the honorable court is functus officio and subsequently lacks jurisdiction to hear and entertain the application” is a blank verse. We invite the court to consider the three issues separately.
23. On the issue of locus standi, the applicant herein applied to be substituted in the place of Rodah Wanjiku Waitete. The application was considered and allowed on 22nd March 2023. The late Rodah Wanjiku Waitete was one of the widows of the deceased. Upon substitution, the applicant herein stepped into the shoes of the deceased widow. The court ordered a substitution and gave him a locus file for this application. The notice of preliminary objection based on the Want of locus standi lacks merit and ought to be dismissed.
24. Is Functus Officio?
25. The applicant took the position that after the delivery of the ruling dated 11th July 2018, the court became functus officio. We submit that this objection lacks seriousness. To establish the seriousness of this assertion, we invite the court to consider the findings and the conclusion of the court in the ruling delivered on 11th July 2018. In the conclusion paragraph, the court stated as follows: -

In the end, I find that the orders sought cannot be granted since the deceased estate has not been wound up, and the administrator, Rodah, is said to be deceased. Under this court's inherent powers, I hereby appoint the widows of the deceased, Grace Wanjiku and Naomi



Wanja, as the estate administrators. The two administrators do take into account what is left of the deceased" estate and file a report on it in court for purposes of distribution.

26. The manner in which the order was made contemplated further action on the part of the administrators appointed by the court. It is our submission that the claim that the court is functus officio is a travesty with the facts.
27. Is plea res judicata merited?
28. Plea res judicata seeks to stop re-litigation and double vexation of a litigant. It proceeds from the factual premise that a court of competent jurisdiction between the same parties and a determination made has considered a matter or specific issue. To successfully make this plea, a party must demonstrate that the issues before the court in the subsequent case were before the court in a prior application and that they were heard and determined. Against this backdrop, we invite the court to consider the present application vis-a-vis the application dated 30th June 2016.
29. The application dated 30th June 2016 was between Grace Wanjiku Waitete and the present Respondent. The same sought orders were made so that the Respondent appears in court and gives details of the transfer of shares in listed companies that formed part of the assets of the deceased. Further, that application sought orders that the Respondent give details of how she subdivided the parcel of land known as Nyandarua/ol-kalou South/53. It was pursuant to that application that the Respondent disclosed that she filed a different succession cause and distributed the properties without regard to the other beneficiaries.
30. The present application was filed by Joseph Njoroge, who was substituted for Rodah Wanjiku. The application sought orders of redistribution of the estate and joinder of third parties who benefited from the respondents' unlawful distribution. It is our submission that the application dated 30th June 2016 and the present application are radically different. The parties who filed the applications were different, and the prayers sought were different. The objection that this application is res judicata lacks any seriousness, and the same should be dismissed with costs.
31. Want of jurisdiction
32. At ground (III) of the notice of preliminary objection, the Respondent has challenged this court's jurisdiction on the grounds that the matter herein is a matter touching on land. At the most basic level, this claim lacks legal or factual foundation. The parcel of land known as Nyandarua/ol-kalou South/53 is one among many other assets of the estate of the late Johanna Waitete, which the Respondent appropriated by unlawfully and secretly filing succession cause number 110 of 2011 long after the estate had been distributed. The application herein seeks orders that the Respondent accounts for the subdivisions that he may have transferred to third parties and, in any event, that if she indeed transferred to third parties that which rightfully belonged to -the other two houses, she should pay a monetary equivalent of those properties to the 2nd and third house.
33. In respect of the third parties who may have benefited from the i conveyances made by the Respondent, the provisions of section 92(2) are relevant. It provides as follows: -

92(2) Where a grant of representation is revoked, or varied, payments and dispositions made in good faith to a personal representative under that grant before the revocation or variation thereof shall be a valid discharge to the person making the same, and a personal representative who has acted under the revoked or varied grant may retain and reimburse himself in respect of



any other person to whom the representation is afterward granted might have properly made:

34. The law protects any dispositions made in good faith. Therefore, revocation of a grant will affect depositions that are not made in good faith. It is our submission that under section 92 of the *Law of Succession Act*, this court has jurisdiction to revoke any disposition of the estate which were not made in good faith.
35. Finally, the question of conflict of jurisdiction between the high court and the specialized courts has been addressed, albeit in a different context, by the high court and the court of appeal in *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017] eKLR. The court of appeals enunciated the doctrine of the dominant question. The court, citing with approval the case of *Paramount Bank Limited vs. Vaqvi Syed Qamara & another* [2017] eKLR, observed as follows: -

“The origin of the dispute between the 1st Respondent and the appellant was presented as a dispute arising from an employee/employer relationship, where the appellant-accused the 1st Respondent of theft followed by a criminal charge of stealing by a servant. This was further followed by suspension and, finally, summary dismissal. There cannot, therefore, be any doubt that, in addition to the claim for unfair termination, the claim relating to general damages for malicious prosecution and defamation, which flowed directly from the dismissal, was equally within the jurisdiction of the court. In the exercise of its powers under Section 12 of the *Employment and Labour Relations Court Act*,^{{{^}}} the court could entertain the dispute in all its aspects and award damages appropriately. ”

By parity of reasoning, the dominant issue, in this case, was the settlement of amounts owing (from the respondents to the appellant on account of a contractual relationship between Ota Hanker and the lender.

36. The exact position was upheld in the case of *Stephen Kariuki Paul v Co-operative Bank of Kenya*, another [2021] e-KLR. Applying the same reasoning to the same case, the dominant issue in this matter is the legality of the subdivision of the parcel of land and the disposition of the assets of the estate single-handedly by the Respondent. The affected third parties are enjoined to demonstrate that they purchased the parcel of land in good faith. The objection on jurisdiction has no legal foundation, and the same ought to be dismissed with costs.

37. Issues Analysis and Determination

After going through the application, preliminary point of law, affidavit, and the submissions on record, I found the issues to be whether the PO has merit and, on the flip side, whether the application has merit. The court starts with the PO, which raises the grounds of objection as follows;

- i. -Want of locus standi
 - ii. - The matter is res judicata.
 - iii. -The court is functus officio and lacks jurisdiction
 - iv. The matter ought to be tried by the environment and land court.
1. On the issue of locus standi,

The applicant herein applied to be substituted in the place of Rodah Wanjiku Waitete. The application was considered and allowed on 22nd March 2023. The late Rodah Wanjiku Waitete was one of the widows of the deceased. Upon substitution,



the applicant herein stepped into the shoes of the deceased widow. The order of substitution made by the court gave him the locus to file this application. The notice of preliminary objection based on the Want of locus standi lacks merit and fails.

39. On a plea of res judicata merited?

Plea res judicata seeks to stop re-litigation and double vexation of a litigant. It proceeds from the factual premise that a court of competent jurisdiction between the same parties and a determination made has considered a matter or specific issue. To successfully make this plea, a party must demonstrate that the issues before the court in the subsequent case were before the court in a prior application and that they were heard and determined. Against this backdrop, it is invited to consider the present application vis-a-vis the application dated 30th June 2016.

40. The application dated 30th June 2016 was between Grace Wanjiku Waitete and the present Respondent. The same sought orders were made so that the Respondent appears in court and gives details of the transfer of shares in listed companies that formed part of the assets of the deceased. Further, that application sought orders that the Respondent give details of how she subdivided the parcel of land known as Nyandarua/ol-kalou South/53. It was pursuant to that application that the Respondent disclosed that she filed a different succession cause and distributed the properties without regard to the other beneficiaries.

41. The present application was filed by Joseph Njoroge, who was substituted for Rodah Wanjiku. The application redistribution of the estate and joinder of third parties who benefited from the Respondent's unlawful distribution. The applicant submits that the application dated 30th June 2016 and the present application are radically different. The parties who filed the applications were different, and the prayers sought were different. Thus, the court finds that the objection that this application is res judicata lacks merit and fails.

42. On Want of jurisdiction;

43. The Respondent has challenged this court's jurisdiction on the grounds that the matter herein is a matter touching on land. The parcel of land known as Nyandarua/ol-kalou South/53 is one among many other assets of the estate of the late Johanna Waitete, which the Respondent appropriated by unlawfully and secretly filing succession cause number 110 of 2011 long after the estate had been distributed. The application herein seeks orders that the Respondent accounts for the subdivisions that he may have transferred to third parties and, in any event, that if she indeed transferred to third parties that which rightfully belonged to -the other two houses, she should pay a monetary equivalent of those properties to the 2nd and third house.

44. With respect to the third parties who may have benefited from the conveyances made by the Respondent, the provisions of section 92(2) are relevant. It provides as follows: -

“Protection of persons acting on representation (1);

Every person making or permitting to be made any payment or disposition in good faith under a grant of representation shall be indemnified and protected in so doing, notwithstanding any defects or circumstances whatsoever affecting the validity of the grant.

(2) Where a grant of representation is revoked, or varied, payments and dispositions made in good faith to a personal representative under that grant before the revocation or variation thereof shall be a valid discharge to the person making the same and a personal representative who has acted under the [Rev. 2012] CAP. 160 Law of Succession 35 [Issue 1] revoked or varied grant may retain and reimburse himself in respect of any other person to whom



the representation is afterward granted might have properly made: Provided that a personal representative who so acted shall account for all payments, dispositions, retentions or reimbursements made by him to the person or person to whom the representation is afterward granted.

45. The law protects any dispositions made in good faith. Therefore, revocation of a grant will affect dispositions that are not made in good faith. It is submitted that under section 92 of the [Law of Succession Act](#), this court has jurisdiction to revoke any disposition of the estate which were not made in good faith.
46. Finally, the question of conflict of jurisdiction between the high court and the specialized courts has been addressed, albeit in a different context, by the high court and the court of appeal in *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 others* [2017] eKLR. The court of appeal enunciated the doctrine of dominant question. The court, citing with approval the case of *Paramount Bank Limited vs. Vaqvi Syed Qamara & another* [2017] eKLR, observed as follows: -

“The origin of the dispute between the 1st Respondent and the appellant was presented as a dispute arising from an employee/employer relationship, where the appellant-accused the 1st Respondent of theft followed by a criminal charge of stealing by a servant. This was further followed by suspension and, finally, summary dismissal. There cannot, therefore, be any doubt that, in addition to the claim for unfair termination, the claim relating to general damages for malicious prosecution and defamation, which flowed directly from the dismissal, was equally within the jurisdiction of the court. In the exercise of its powers under Section 12 of the [Employment and Labour Relations Court Act](#),^{{{^}}} the court could entertain the dispute in all its aspects and award damages appropriately. ”
47. The exact position was upheld in the case of *Stephen Kariuki Paul v Co-operative Bank of Kenya*, another [2021] e-KLR. Applying the same reasoning to the same case, the dominant issue in this matter is the legality of the subdivision of the parcel of land and the disposition of the assets of the estate single-handedly by the Respondent. The affected third parties may be enjoined to demonstrate that they purchased the parcel of land in good faith. The objection on jurisdiction has no legal foundation, and the same fails.
48. On the merit of the application, the orders sought.
49. This succession cause was initially filed in Nakuru and serialized as Succession Cause number 202 of 1988. At the time of filing of the cause, there was no high court station in Nyahururu. The same was concluded, and the estate was shared in specific proportions among the three houses that comprise the dependents of the estate. What remained was the distribution of the estate.
50. As of 2017, when the applicants moved to court, their house had not received its share of the estate. Upon application, the file was transferred to Nyahururu, and the current serial number, Succession Cause number 1 of 2017, was given. The first application that the applicant filed was for the nullification of the subdivision of the parcel of land known as Nyandarua/Ol-Kalou South/53, nullification of the sale of shares in Kenya breweries, and that third parties who had bought properties from the Respondent be enjoined in the proceedings.
51. The application was considered, and the court ordered that the estate of the deceased be wound up. The surviving widows were appointed as the administrators of the estate. At the hearing of that application, it emerged that after the conclusion of succession cause number 2002 of 1988, the Respondent clandestinely filed Succession Cause number 110 of 2011, citing herself as the sole beneficiary of the



estate. Using the grant that was issued after that, she appropriated the estate singlehandedly and to the exclusion of the other two widows.

52. This court, in its ruling dated 11th July 2018, directed that an account be given of the remaining properties.
53. To this end, the land registrar Nyahururu was directed to report on the fate of the parcel of land known as Nyandarua (Ol-kalou South/53. When the report was filed, it emerged that the parcel of land had been subdivided and transferred by or at the instance of the Respondent. The application dated 28th July 2022 was filed pursuant to the court order that an account of the remaining properties be taken and redistributed.
54. With this detailed background, the court is invited to consider the application dated 28th July 2022.
55. Merits and competence of the application dated 28th July 2022.
56. The application dated 28th July 2022 seeks a redistribution of the net estate of the deceased. It proceeds from the factual premise that a distribution had already been made, but the Respondent, in total contravention of the certificate of confirmation issued by the court, filed a separate succession case and bequeathed the entire estate to herself. She has sold most of the estate assets to third parties. Therefore, these proceedings will have an impact on the third parties.
57. Prayer 3 of the notice of motion in respect to the rights of the third parties to be heard invokes provisions of section 92 of the *Law of Succession Act*, which is to the effect that the third parties who benefit from a conveyance or a disposition of immovable property are entitled to protection if they can demonstrate that they acted innocently and in good faith. Thus, the court makes the following orders;
 - a. Joseph Njoroge shall be and is hereby substituted for Rodah Wanjiku Waitete solely for the purposes of winding up the estate herein.
 - b. That all the third parties who are beneficiaries of the illegal sale and transfer of the estate property by the Respondent (Naomi Wanja Waitete) be enjoined to these proceedings and they be at liberty to file any affidavits and show cause why the conveyances in their favor should not be revoked.
 - c. Costs to the applicant in any event.

RULING DATED, SIGNED, AND DELIVERED AT NYANDARUA THIS 19TH DAY OF SEPTEMBER 2024.

.....

CHARLES KARIUKI

JUDGE

