



REPUBLIC OF KENYA



**In re Estate of Njega Njirata(Deceased) (Succession Cause 442 of 2012)
[2024] KEHC 10837 (KLR) (18 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10837 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
SUCCESSION CAUSE 442 OF 2012
LM NJUGUNA, J
SEPTEMBER 18, 2024**

IN THE MATTER OF THE ESTATE OF NJEGA NJIRATA (DECEASED)

BETWEEN

JANET MAIRU MUGO 1ST APPLICANT
JOSEPHINE NJERI NTHIGA 2ND APPLICANT
AGNES IRUMA NTHIGA 3RD APPLICANT
MIRIAM NJOKI NJERU 4TH APPLICANT
LUCIANA MUTHONI NTHIGA 5TH APPLICANT
NAFTARY NYAGA NTHIGA (DECEASED 6TH APPLICANT
ANN IRIMBA NTHIGA (DECEASED 7TH APPLICANT

AND

NJERU NTHIGA 1ST RESPONDENT
CICILIA WANJA NTHIGA 2ND RESPONDENT
NEWTON NTHIGA NJERU 3RD RESPONDENT
SAPHANIA NYAGA NJAGI 4TH RESPONDENT
JEDIDA GACONI KIRANGO 5TH RESPONDENT
FINDESIE NAMU NYAGA 6TH RESPONDENT
ELIJAH KITHAKA 7TH RESPONDENT



RULING

1. The 1st and 3rd respondents have filed a notice of preliminary objection dated 18th January 2024 on the following grounds:
 - a. That this honourable court lacks jurisdiction to entertain both applications dated 21st November 2023 and 13th December 2023, as the estate of the deceased has fully been transmitted and there is no land in the name of the deceased; and
 - b. That the application dated 21st November 2023 upon which the application dated 13th December 2023 is premised is res judicata.
2. The preliminary objection was canvassed by way of written submissions
3. In their submissions, the 1st and 2nd respondents denied having filed the preliminary objection. They stated that the court has jurisdiction to determine the applications since such determination will expose the 3rd and 4th respondents' inability to faithfully administer the estate. That they were misled into omitting the names of some beneficiaries of the estate and that 3rd and 4th respondents were sureties in the process and they are not dependants of the deceased. That through deceit, the 3rd and 4th respondents inherited the 18-acre parcel number Nthawa/Riandu/1319 and hurriedly subdivided it. They submitted that it is in the interest of justice that the application be heard since the widow and children of the deceased risk being disinherited and rendered destitute. They urged the court to dismiss the preliminary objection.
4. The 5th respondent submitted stating that the 2nd respondent informed her that he was filing for succession to distribute the estate and she was desirous of buying parcel number Nthawa/Gitiburi/943, a portion of it. That she did not know that some beneficiaries had been left out of the process by the 2nd respondent. That she is an innocent buyer and she did not wish to disinherit any of the beneficiaries.
5. The 6th respondent submitted that she was introduced to the 1st respondent who was selling parcel number Nthawa/Gitiburi/719 without involving some beneficiaries. She stated that she supports that the application be heard and determined in order to safeguard the interests of all the beneficiaries.
6. The 7th respondent stated in his submissions that it is fair and just that the applications be heard and determined in order to ensure that all the beneficiaries' interests are catered for.
7. The applicants jointly submitted that the preliminary objection raises points of law and they relied on the case of *Mukisa Biscuits Manufacturing Co. Ltd v. West End Distributors Limited* (1969) EA. 696. It was their argument that the summons for revocation is not res judicata since it has never been litigated upon under the same title or parties in this court. That the argument that the court lacks jurisdiction is misplaced because it does not raise a pure point of law since under section 76 of the [Law of Succession Act](#), a grant may be revoked at any time.
8. The issue for determination is whether the preliminary objection has merit.
9. In the case of *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* [1969] EA 696 at page 700 paragraphs D-F the court stated:

“....A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may



dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

10. In their submissions, the applicants argued that the preliminary objection does not raise pure points of law. The issues therein are the jurisdiction of the court to determine the 2 applications and the issue of res judicata. These are points of law which may be determined herein and the court cannot move forward without settling them.
11. The application dated 21st November 2023 is a summons for revocation of grant while the application dated 13th December 2023 seeks orders; inter alia, a temporary injunction against the respondents from subdividing, alienating, selling, transferring or charging land parcel numbers Nthawa/Gitiburi/929, 764, 912, 943 and Nthawa/Riandu/1319 & 719. The preliminary objection challenges the jurisdiction of the court to hear and determine the 2 applications and also states that the application dated 21st November 2023 is res judicata.
12. On the issue of jurisdiction, the court has authority to determine the summons for revocation of grant at any time whether before or after confirmation of grant. This means that it does not matter the amount of time that has passed since the grant was issued and the estate distributed. It is also immaterial that the revocation application is brought after many years because section 76 of the [Law of Succession Act](#) does not limit the time.
13. The preliminary objection states that the court lacks jurisdiction since there is currently no property in the name of the deceased. This argument is flawed because family court has jurisdiction to order cancellation of registration of titles, if necessary, where the matter arises from the grant it issued. Similarly, the family court may choose to issue temporary injunctions in the interest of preserving the estate where necessary. Therefore, nothing stops this court from exercising its jurisdiction as established under the law.
14. From perusal of the court record, I notice that the 7th respondent filed summons dated 13th December 2017 seeking revocation of grant on the grounds that the grant was obtained fraudulently by concealment from the court of the fact that the 3rd and 4th respondents herein were not dependants of the deceased. The application was determined through the court’s ruling delivered on 18th September 2019 wherein the Judge dismissed it. Section 7 of the [Civil Procedure Act](#) provides for res judicata as follows:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

(See also the cases of [Lal Chand v Radha Kishan](#), AIR 1977 SC 789 and The [Independent Electoral and Boundaries Commission v Maina Kiai & 5 others](#), [2017] eKLR.)
15. The summons for revocation filed arose a direct issue and it was filed by the 7th respondent herein against the 3rd and 4th respondents. The matter was determined in this very estate with finality. This means that indeed, the matter is res judicata and the court needs not to entertain it afresh.
16. In the end, I find that the Preliminary objection succeeds on one limb. The court finds itself bearing jurisdiction to determine the applications. However, the application dated November 21, 2023 is res



judicata, the issues raised therein having been already determined through the ruling delivered on September 18, 2019 by F. Muchemi, J.

17. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 18TH DAY OF SEPTEMBER, 2024.

L. NJUGUNA

JUDGE

