



**In re Estate of Gitonga Kinyeru (Deceased) (Succession Cause  
118 of 1997) [2024] KEHC 12851 (KLR) (17 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12851 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 118 OF 1997  
DKN MAGARE, J  
OCTOBER 17, 2024  
IN THE MATTER OF THE ESTATE OF GITONGA KINYERU (DECEASED)**

**BETWEEN**

**BEATRICE NYANDIA KIERU ..... APPLICANT**

**AND**

**RUTH MUTHONI GITONGA ..... 1<sup>ST</sup> RESPONDENT**

**STANLEY K. KINYERU GITONGA ..... 2<sup>ND</sup> RESPONDENT**

**JOHN CRISPUS GITONGA KINYERU ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The late Gitonga Kinyeru, died on 25/7/1996 aged 88 solid years. Since then his estate has not known peace. The cause herein was filed on 9/5/1997. A consent for petition was given for Ruth Muthoni Gitonga to apply for letters of administration intestate.
2. Three assets were listed to belong to the estate:-
  - a. Tetu/Muthuaini/610 – 9.3 acres
  - b. Laikipia/Tigithi/Matanya Block V/147 – 9.804 Ha
  - c. Plot No. 41 Gitathini market
3. Summons for confirmation of grant was filed on 10/6/2002. The three beneficiaries shared the estate, with Ruth Muthoni Gitonga getting half of Tetu/Muthuaini/610 and Laikipia/Tigithi/Matanya Block V/147. The other 2 beneficiaries shared 2.325 acres each and 6 acres each for the 2 parcels. Plot 41 Gitathini market was shared jointly. The grant was confirmed on 22/11/2002.



4. On 9/8/2017 Beatrice Nyandia applied for provision of documents in the file for purposes of revocation of grant. She applied for revocation on 5/8/2019. She was said to be a granddaughter born of Wairimu Gitonga (deceased). She stated that she had conducted sizeable development on Tetu/Muthuaini/610, where she lived from 1963 to date.
5. Upon filing John Crispus Gitonga Kinyeru appointed an Advocate. He filed an affidavit on 5/11/2019. He stated that he gave land parcel No. 211 and another to Beatrice Nyandia Kieru in exchange for a share. Thereafter said John Crispus Gitonga Kinyeru sought to be the guardian for the administrator. As directed, parties filed submissions.

### **Submissions**

6. The 3<sup>rd</sup> Respondent stated that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are deceased. The next question is whether there was a need to disclose a grandchild pursuant to Section 29 of Cap. 160 which provides as follows:-  
For the purposes of this Part, "dependant" means-
  - (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
  - (b) such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
  - (c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.
7. He stated that the deceased must have maintained the grandchild for her to inherit. They stated that without a response from the deceased or the administrator, the application lacks legal standing.
8. The Applicant filed submissions stating that the estate is fully transmitted. Her father is known and her mother is married. The 3<sup>rd</sup> respondent was wondering whether the widow was under obligation to disclose all the deceased's grandchildren. He termed the application as a fishing expedition. He also stated that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were deceased and were not expected to respond. He denied fraud or concealment. He termed the Applicant is a granddaughter whose father is known and as well as the mother who is married. I do not know the relevance of the marriage in this contest. The 3<sup>rd</sup> respondent himself is said to be a grandson who was brought up by the deceased. He did not move with the mother as he was born out of wedlock. The relevancy of this information is also a mystery to the court. Issues of legitimacy or illegitimacy do not arise in the contest of succession. Succession is earned at conception.
9. The question that falls for my determine is whether:-
  - a. The grant should be revoked.
  - b. Whether the Applicant is a dependent.
10. The 3<sup>rd</sup> Respondent confirmed that the Applicant is a grandchild. He had also given the Applicant some land belonging to him. This is an admission of existence of the grandchild. The grandchild is a child of an heir to the estate. It is the duty of the parties to make full disclosures when applying for letters of administration. There is no dispute that the Applicant is a beneficiary. At the very least there ought to have been disclosure of the Applicant's mother and a share given. It is cavalier to



state otherwise. The Applicant and her mother stood as beneficiaries who ought to be disclosed. It is therefore my finding that the Applicant is a beneficiary of the estate of the deceased.

11. The grant of letters of administration intestate given to Ruth Muthoni Gitonga (deceased) became inoperative upon her death. They stand revoked by operation of the law. In the recent decision of *Mary Wambui Kibunya V Peter Kariuki and James Ngugi* [Eldoret CACA 308 of 2019, the Court of Appeal [Gatembu, Ochieng, & Korir, JJ.A.] posited as doth: -

Were her application for substitution and appointment of new administrators to succeed, there would be no need to pursue the pending application for the revocation of the grant issued to the 2nd deceased. As correctly pointed out by the learned Judge in his ruling, the grant previously issued to the 2nd deceased stood revoked as a result of his death and the appellant could not be heard to argue that she wished to pursue the summons for revocation of the grant that she had filed against the 2nd deceased before his demise.

12. The grant issued on 22/11/2002 is hereby revoked by operation of the law as it is inoperative or useless. In lieu thereof, I hereby issue fresh letters of administration to the two known remaining dependents Beatrice Nyandia Kieru and John Crispus Gitonga Kinyeru.
13. The new administrators should apply for confirmation enclosing the current search of both the estate properties and the purported gift, that is, Plot No. 184A serial 211 at Nyakio Pig Company Ltd.

#### **Determination**

14. The upshot of the foregoing is that I make the following orders:-
  - a. The grant of letters of administration issued to Ruth Muthoni Gitonga are hereby revoked.
  - b. The court in lieu thereof appoints Beatrice Nyandia Kieru and John Crispus Gitonga Kinyeru as administrators of the estate of the deceased.
  - c. They shall apply for confirmation of letters of administration intestate annexing the current searches of all properties including the purported gift, that is, Plot No. 184 A, serial 211 at Nyakio Pig Company Ltd.
  - d. Directions on 3/3/2025.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 17<sup>TH</sup> DAY OF OCTOBER, 2024.**

**JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

**In the presence of:-**

No appearance for the Applicant

No appearance for 1<sup>st</sup> – 2<sup>nd</sup> Respondents

Mr. Kiminda for the 3<sup>rd</sup> Respondent

Court Assistant – Jedidah

