



**In re Estate of Annah Nyawira Githiari (Deceased) (Succession Cause 13 of 2018) [2024] KEHC 12387 (KLR) (9 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12387 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 13 OF 2018  
DKN MAGARE, J  
OCTOBER 9, 2024  
IN THE MATTER OF THE ESTATE OF THE LATE  
ANNAH NYAWIRA GITHIARI – (DECEASED)**

**BETWEEN**

**SAMALO WANJIRU NDUNGU ..... PETITIONER**

**AND**

**ISAIAH WAMUNYU GITHIARI ..... RESPONDENT**

**RULING**

1. Parties file suits for purposes of determining matters in controversy. However others do so in a vain hope that courts are manned by morons, and will issue all kinds of orders.
2. The matter herein has been in a state of animated dance since 2018. The same has not seen an end in spite of being active throughout. Vide an application dated 21/5/2018 which was filed on even date the following orders were sought:-
  - a. That the proceedings in Nyeri Chief Magistrate’s Court Succession Cause No. 31 of 2017 be stayed pending the hearing and final determination of the application.
  - b. That the grant issued to the Respondent herein in Nyeri Chief Magistrate’s Court Succession Cause No. 31 of 2017 be revoked and/or annulled and a fresh one issued to John Ndiangu Githiari, Isaiah Wamunyu Githiari And Samalo Wanjiru Ndung’u for transparency and accountability of the deceased’s estate in an honest manner.
  - c. That after the same is revoked and/or annulled the family to apply Section 159 of *the Constitution* to ensure that every beneficiary gets justice.



3. This was pursuant to Succession Cause No. 31 of 2017. One Samalo Wanjiru Ndung'u was said to be an administrator in the above cause and Nyeri CMCC 1111/2012. For avoidance of doubt this matter relates to estate of the late Annah Nyawira Githiari (Deceased).
4. The properties listed in Form P&A 5 are:-
  - a. Land Parcel No. Marmanet/North Rumuruti Block 2/2340 (Ndurumo) – Approx. 1.740 Ha.
  - b. Land Parcel No. Marmanet/North Rumuruti Block 2/2341 (Ndurumo) – Approx. 1.869 Ha.
  - c. ½ interest in plot No. Thegenge/Gathuthi/593/55 – Approx. 0.0424 Ha.
  - d. Shares with British American Tobacco Kenya Ltd A/C No. 102750.
  - e. Shares in Kenya Commercial Bank A/C No. M00105724.
5. The deceased is said to have died on 13/7/2014 intestate. All the searches were enclosed showing the late Annah Nyawira Githiari is the registered owner. The beneficiaries listed were:-
  - i. Peter Ndiritu
  - ii. Monicah Wairimu Ngatia
  - iii. Isaiah Wamunyu Githiari
  - iv. John Ndiangui Githiari
  - v. Samwel Njuki Githiari
  - vi. Susan Waruiru Munuhe
  - vii. Samalo Wanjiru Ndungu
  - viii. Loise Wambui Githiari
  - ix. Daniel Mwathi Githiari
6. By an application dated 14/1/2019, Isaiah Wamunyu Githiari sought for orders of injunction over Land Parcel No. Subukia/Subukia Block 1/215 (Tetu). The title deed is said to be in joint names of the Petitioner and one Ann Nyambura Wamunyu. The search is in the deceased's name jointly with Ann Nyambura Wamunyu.
7. The said application was opposed. The application was decided as the court shall shortly enunciate. The matter was settled through a mediation agreement dated 18/10/2021. Land Parcel No. Subukia/Subukia Block 1/215 (Tetu) was not among one of the properties that were up for distribution.
8. After the mediation an application dated 16/3/2022 was filed supported by an affidavit of Paul Njihia Njoroge Advocate. The same was struck out on 2/3/2024. The current application was then filed. This was after the Certificate of Confirmation of Grant was issued.
9. There is also pending in the file an unnecessary bill of costs for the struck out application filed on 14/3/2023. There are two aspects to the application:
  - i. The reasons for the application.
  - ii. The validity of the order dated 13/3/2023.
10. The orders were issued in a criminal case and unrelated to the charge in court. The first aspect is that there has been no determination whether the said land parcel belongs in one way or another to the



estate. However, it is also not part of the estate by any means. Whether the said parcel should be disregarded, is a matter in the realms of the Environment and Land Court. The order relied on by the Applicant is a nullity.

11. In *Macfoy v United Africa Co. Ltd* [1961] 3 All E.R. 1169, Lord Denning delivering the opinion of the Privy Council at page 1172(1) said;

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

12. The order issued herein by the court are spent. However, the order dated 13/3/2023, by Hon. V. Kiplagat in Nyahururu CMCR 169/2019 in a criminal case, is a nullity. In the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR, The Supreme Court stated as doth: -

“This Court dealt with the question of jurisdiction extensively in the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

13. Therefore, it is settled that jurisdiction is everything. The court was not bound to take jurisdiction where it did not have and should have downed its tools where it had no jurisdiction. My senior brother Nyarangi JA, as then he was, immortalized these words, in *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] eKLR as follows: -

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:

“By jurisdiction is meant the authority which a court as to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist.



Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given”

14. The court will therefore assume jurisdiction where it has and eschew jurisdiction where none exists. Parties should therefore solve their issues in a proper filed case in the Environment and Land Court pursuant to Article 162(2)(b) of *the Constitution*.
15. Lastly, other orders issued earlier on 14/3/2019 lapsed upon the confirmation of grant through the mediation agreement.
16. The criminal court purported to decide a matter which is indicated to be subject of these proceedings, albeit wrongly.

#### **Determination**

- a. The Application dated 13/3/2023 lacks merit.
- b. The orders or prohibitions relating to the properties of the estate that were issued on 14/3/2019 are spent given the conclusion of the cause.
- c. The orders issued on 13/3/2023 in Nyahururu Chief Magistrate’s Court criminal Case No. 169 of 2019, in respect of Land Parcel No. Subukia/Subukia Block 1/215 (Tetu) is a nullity, as a criminal court cannot determine rights of parties, title to land, and partition thereof.
- d. Parties should pursue a proper claim in the Environment and Land Court.
- e. This file is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 9TH DAY OF OCTOBER, 2024.**

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

**KIZITO MAGARE**

**JUDGE**

In the presence of:

Mr. Ndirangu for the Applicant

Mr. Njihia for the Respondent

Court Assistant – Jedidah

