



REPUBLIC OF KENYA



**In re Estate of Jane Kagure King'ori (Deceased) (Succession Cause  
457 of 2005) [2023] KEHC 17619 (KLR) (Family) (15 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17619 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY**

**SUCCESSION CAUSE 457 OF 2005**

**MA ODERO, J**

**MAY 15, 2023**

**BETWEEN**

**ERICK WARUTERE ..... 1<sup>ST</sup> APPLICANT**

**EUNICE WAIRIMU KING'ORI ..... 2<sup>ND</sup> APPLICANT**

**SILVIA WAMBU ..... 3<sup>RD</sup> APPLICANT**

**AND**

**NELSON KING'ORI GICHUHI ..... 1<sup>ST</sup> RESPONDENT**

**CHIEF LAND REGISTRAR AT ARDHI HOUSE ..... 2<sup>ND</sup> RESPONDENT**

**REGISTRAR OF LANDS AT NYERI ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before this Court for determination is the summons dated May 17, 2022 by which the Applicant/Beneficiaries Erick Warutere, Eunice Wairimu King'ori and Silvia Wambui King'ori seeks the following orders:-
  1. Spent.
  2. Spent.
  3. That this honourable court be pleased to issue orders to preserve the estate of the Deceased, namely parcel number Guthu/Gatitu/3197 pending the hearing and determination of the succession application herein.



4. That this honourable court be pleased to order the 2<sup>nd</sup> Respondent-Chief Land Registrar, Ardhi house, to register a caution against parcel Number Nairobi Block 118/Parcel No 1484 pending the hearing and determination of the application herein.
5. The costs of this application be borne by the 1<sup>st</sup> Respondent.”
2. The application which was premised upon Sections 45 and 97 of the *law of Succession Act* Cap 160, Laws of Kenya, Rule 4 of the *Probate and Administration Rules* and all other enabling provisions of the law was supported by the Affidavit of even date sworn by the 1<sup>st</sup> Applicant.
3. The 1<sup>st</sup> Respondent Nelson King’ori Gichuhi filed an undated Replying Affidavit opposing the application. The matter was canvassed by way of written submissions. The Applicants filed the written submissions dated December 5, 2022 whilst the 1<sup>st</sup> Respondent relied upon his written submissions dated December 16, 022.

### **Background**

4. This succession Cause relates to the estate of the late Jane Kagure King’ori who died intestate on June 29, 2003 at the MP Shah Hospital. A copy of the Death Certificate Serial No 754532 appears as Annexure NKG ‘1’ to the Petition dated December 2, 2004.
5. The Deceased was survived by the following persons:-
  - 1 Nelson King’ori Gichuhi - Widower/Husband
  - 2 Eric Warutere King’ori - Son
  - 3 Eunice Wairimu King’ori - Daughter
  - 4 Silvia Wambui King’ori - Daughter
6. The estate of the Deceased comprised 1000 shares in Kenya Airways, 500 shares in National Bank of Kenya and the parcel of land known as Aguthu/Gatitu/3197 in Nyeri Municipality measuring 0.1025 Hectares
7. At the time of death of the Deceased all of her three (3) children were minors. The widower (1<sup>st</sup> Respondent/Trustee) was issued with Grant of letters of Administration on April 29, 2005. The Grant was duly confirmed on June 25, 2005. The confirmed Grants indicated that the suit property was to be held by the 1<sup>st</sup> Respondent in trust for the three (3) children of the Deceased until the last (youngest) child attained the age of majority.
8. The 1<sup>st</sup> Applicant avers in his supporting Affidavit that all three (3) children of the Deceased have now attained the age of majority and thus the suit property ought to be transferred to the Applicants in terms of the confirmed Grant.
9. The Applicants accuse the 1<sup>st</sup> Respondent of intermeddling with the estate of the Deceased and of trying to illegally sell the suit land and Nairobi Block 118/Parcel No 1484 to a third party. The 1<sup>st</sup> Applicant avers that he attempted to register a caution against the suit land at the Nyeri Land Registry but his attempt was declined for unknown reasons.
10. The Applicants accuse the 1<sup>st</sup> Respondent of deliberately delaying the finalization of this Succession Cause by refusing to sit down and hold discussions with them.
11. The Applicants state that they are apprehensive that if the orders sought are not granted then they may be deprived of their inheritance.



12. The 1<sup>st</sup> Respondent in reply stated that the Deceased was his wife. He confirmed that LR Aguthu/Gatitu/3197 is the only asset yet to be distributed. The 1<sup>st</sup> Respondent states that he has no knowledge of parcel No Nairobi Block 118/Parcel No 1484 at all.
13. The 1<sup>st</sup> Respondent contends that as the spouse of the Deceased he has a life interest in the suit land. He states that the property should be subdivided and transferred to the Applicants at their own costs. That in any event the property should be sold and the proceeds divided equally between the Applicants and himself.
14. The 1<sup>st</sup> Respondent categorically denies intermeddling in the estate of the Deceased. He urges the court to dismiss this application in its entirety.

### **Analysis and Determination**

15. I have carefully considered the summons before this court. The Reply filed thereto as well as the written submissions filed by both parties. The only issue for determination is whether the conservatory orders sought ought to be granted.
16. *In the matter of the Estate Of Paulo Kiplagat Boiwo (Deceased)* (2012) eKLR the court stated as follows:-

“Preservatory orders are in essence similar to injunctive orders. The Applicants have to make out a prima facie case and show that they will suffer irreparable loss if the order sought is not granted. The Applicants must also show the substantial loss they are likely to suffer which loss is irreparable and cannot be compensated by damages”
17. In the present case the Applicants are the children of the Deceased whilst the 1<sup>st</sup> Respondent is the Widower. They are all beneficiaries of the estate and all have an interest in ensuring that the estate is preserved pending distribution.
18. Obviously if the suit property is disposed of before final distribution this will be detrimental to the Applicants. Therefore I am satisfied that a *prima facie* case has been established.
19. Regarding the issue of irreparable loss, the Grant issued in this matter was confirmed way back in the year 2005. All that remains in distribution of the estate to the beneficiaries. The matter is at a very advanced stage.
20. The Applicants allege that the 1<sup>st</sup> Respondent is plotting to sell the suit property to a third party without their involvement. Whether this allegation is true or not given how long this matter has been pending it is in the interests of all the parties that the estate be preserved. Any sale of the suit property will certainly cause irreparable loss to the Applicants as they would lose their lawful inheritance.
21. The balance of convenience clearly favours preserving the suit property pending distribution of the estate.
22. The Applicants sought orders in respect of LR Aguthu/Gatitu/3197 and Nairobi Block 118/Parcel No 1484. There is nothing to indicate that the Nairobi property forms part of the estate of the Deceased. No Title Document in respect of that property has been presented to the court. The same is not listed in the Petition for letters of Administration as an asset belonging to the Deceased. I therefore decline to make any orders in respect of Nairobi Block 118/Parcel No 1484.
23. Finally I am satisfied that the orders sought in this summons are merited. I therefore allow the application and make the following orders:-



- 1 Preservatory Orders be and are hereby issued with respect to Parcel Number Aguthu/Gatitu/3197 forming part of the estate of the Deceased pending hearing and determination of this Succession Cause.
- 2 The Land Registrar Nyeri is directed to register a caution against Parcel Number Aguthu/Gatitu/3197 pending further orders of this court.
- 3 This being a family matter each party will bear their own costs.

**DATED IN NAIROBI THIS 15<sup>TH</sup> DAY OF MAY, 2023.**

**MAUREEN A ODERO**

**JUDGE**

