



In re Estate of the Late Richard Gathigi Muiga (Deceased) (Succession Cause 202 of 2005) [2023] KEHC 20552 (KLR) (20 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20552 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 202 OF 2005
HK CHEMITEI, J
JULY 20, 2023
IN THE MATTER OF THE ESTATE OF THE
LATE RICHARD GATHIGI MUIGA (DECEASED)**

BETWEEN

BERNARD KABOCHI GATHIGI & 4 OTHERS APPLICANT

AND

MIRIAM MUTHONI GATHIGI RESPONDENT

RULING

1. In their Notice of Motion dated July 6, 2021 the applicants are praying for the following orders;
 - (a) That the court be pleased to revoke the rectified confirmation of grant issued on July 12, 2012.
 - (b) That the court be pleased to restrain the respondent with her agents from distributing, subdividing or disposing land parcels numbers Nyandarua /Tarusha /2696, 2697, 2700, 2701, 2702, 2699, 2698, 2727, 2706, 2705, 2724, 2703, 2708, 2709, 2710 and 2711 in exclusion of the applicants who are also the rightful beneficiaries of the estate of the late Richard Gathigi Muiga pending the determination of this cause.
 - (c) That the OCS Miharati police station to enforce the terms of the above orders.
2. The applicants also prayed for costs.
3. The application is supported by the sworn affidavit of Bernard Kabochi Gathigi sworn on July 6, 2021 and the grounds on the face of the application.
4. The applicants have deponed that they are beneficiaries to the estate of their father herein and that they were not consulted when the grant was being rectified and that the land parcel stated in the motion was



- subdivided without their consent. That they only learned when an eviction notice was served upon them vide ELC Case no 182 of 2018 at Nyahururu.
5. For this reason, the grant ought to be revoked as well as the resultant titles and the distribution be done afresh.
 6. In her replying affidavit sworn on November 10, 2021 the respondent deponed that the issues raised by the applicants were dealt with in the ELC case no 181 of 2018 where the court ordered the applicants to be evicted from the suit land.
 7. She went on to state that there was no reason to revoke the rectified grant as the applicants who were represented by their mother, Wambui Gathigi, her co widow, during the rectification exercise. She said that the reason for rectification of the grant was because the size of the land, then known as Nyandarua / Turasha /104, on the ground did not march that indicated in the title deed a fact well known by the applicants.
 8. The respondent in the premises prayed that the application be disallowed noting that all the issues raised by the applicants were untrue as they were fully aware and the subdivision of the land was as per the confirmed rectified grant from this court.
 9. When the matter came up for hearing, the applicants were absent and it appears from the court records that they have not been keen to prosecute the same.
 10. Having perused the court records this court is satisfied that the grant issued and rectified twice has always been done in the presence of the applicants. There is no evidence that they ever challenged even the first grant.
 11. The only issue is the size of the land in my view. The court granted the parties their wishes as per what they presented in court. If it turned out as deponed by the respondent that the actual size of the land on the ground did not fit that indicated on the title or was at variance, then it was logical to rectify the grant a fact which the applicants have not disputed.
 12. The sharing or subdividing it must of course be in tandem with the grant and nothing outside the same. The applicants have not demonstrated that the petitioner went outside the grant as rectified. Titles were thereafter issued and I think that was the basis for the suit at the Environment and Land Court.
 13. This court as rightfully deponed by the respondent will not deal with the issues surrounding the said case for want of jurisdiction. The eviction orders if any should be dealt with by the right court and not this court. In essence the prayers to stop the said orders are superfluous for want of jurisdiction.
 14. In the premises, I think I have stated enough to show that the application is not meritorious and the same is hereby dismissed with costs to the respondent.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 20TH DAY OF JULY 2023.

H K CHEMITEI

JUDGE

