



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Mwangi Chege (Deceased) (Civil Appeal  
46 of 2014) [2023] KEHC 19709 (KLR) (6 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 19709 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CIVIL APPEAL 46 OF 2014**

**J WAKIAGA, J**

**JULY 6, 2023**

**IN THE MATTER OF THE ESTATE OF MWANGI CHEGE (DECEASED)**

**BETWEEN**

**FRANCIS MAINA MWANGI ..... 1<sup>ST</sup> APPELLANT  
STEPHEN KURIA MWANGI ..... 2<sup>ND</sup> APPELLANT  
SAMUEL NGUREMWANGI ..... 3<sup>RD</sup> APPELLANT  
BETH WAITHIRA CHEGE ..... 4<sup>TH</sup> APPELLANT**

**AND**

**JANE MWANIKI KURIA ..... RESPONDENT**

*(Being appeal from the ruling of the Chief Magistrate Court at Muranga Succession Cause NO 202 of 1998(sic) delivered on 26th of May 2014 by Hon. B. Ochieng CM)*

**JUDGMENT**

1. By an application dated 2<sup>nd</sup> April 2014 under certificate of urgency under rule 63 of cap 160, the Respondent sought for an order against the appellants to be restrained from barring/preventing the same from picking tea and coffee and cultivating half share of land parcel No Loc.8/Theri/ 335 until the case is heard and determined.
2. She sought an order restraining the Appellants from picking the tea coffee and cultivating the half of share of land that the Applicant had been cultivating and has crops until the case is heard and determined on the grounds that she was a daughter of the objector whom she has substituted and that the Appellant's father who was the Petitioner had not taken any steps to have the cause heard since 1992.



3. She stated that she had been utilizing half of the suit land and that on the 7<sup>th</sup> march 2014 the Appellants entered the land and started picking her tea and coffee and digging the land and planting thereon.
4. By a Ruling thereon, the subject matter of this Appeal the Court granted the two Orders sought together with cost to the Respondent and being dissatisfied with the said Ruling, filed this Appeal and raised the following grounds of appeal:
  - a. That the Applicant Respondent failed to meet the threshold for the grant of injunction.
  - b. That the trial Court did not have jurisdiction.
  - c. That the Court erred in law and fact by holding that the Applicant had nowhere to go to whereas Loc.8/Gitura/kairichi/129 was registered in the names of her father.
  - d. That the Court erred by failing to up hold clear provisions of section 48 of the Law of Succession.
5. The Appellants sought for an order that the Ruling of the trial Court dated 26<sup>th</sup> day of May 2014 be set aside.
6. While the Appeal was pending, the Respondent by an application dated 23<sup>rd</sup> march 2022 suit for the dismissal of the appeal for want of prosecution on the ground that they had not prosecuted the same for a period of seven years, thereby causing the same unnecessary anxiety, prejudice and expenses in maintaining the suit.
7. It was supported by an affidavit in which she deposed that the Appeal was filed on 4<sup>th</sup> May 2015 having been dissatisfied by the decision delivered on 26<sup>th</sup> May 2014 and that they were enjoying an order of stay granted on 15<sup>th</sup> August 2014, hence their failure to prosecute the Appeal to bring the matter to its logical conclusion.
8. In response to the said application, the Appellants filed a replying affidavit sworn by Francis Maina Mwangi in which he deposed that they had written to the Deputy Registrar of this Court vide a letter dated 1<sup>st</sup> February 2017 requesting whether the Appeal had been admitted but were informed that the file was with the research assistant, so could not take date for directions. They subsequently did other letters dated 1<sup>st</sup> and 14<sup>th</sup> September 2017 respectively and had been making a follow up on the same and were willing to prosecute the Appeal on its merits.
9. The Appellants filed another replying affidavit on 8<sup>th</sup> November 2022 sworn on the 7<sup>th</sup> in which Francis Maina Mwangi stated that any delay in prosecuting the case could not be visited on them due to the mistake on the part of their advocates and that the Appeal should be hear on merit.
10. On the 19<sup>th</sup> July 2022 the matter came before the Court for the hearing of the application by the Respondent for the dismissal of the Appeal in the absence of the Advocate for the Appellant and on 30<sup>th</sup> November 2022 the Court admitted the appeal for hearing by way of written submissions and compromised the application by the Respondent by payment of cost thereon by the Appellants.
11. From the submissions filed by the parties it is clear that they did not understand the Court directions as the submissions filed by both are in respect of the application which had been compromised. The Appellants submitted that the Respondent was a beneficiary of the estates of her father Chege Maina in Muranga Succession Cause No 395 of 1986 and was therefore an intruder and a stranger in the proceedings appealed from and that the suit property number Loc.8/Theri/335 was a sole property of Mwangi Chege who is the father of the Appellants and the issue of trust as claimed by the Respondent did not arise.



## Determination

12. From the memorandum of Appeal, the Appellants main complaint is the exercise of discretion on the part of the trial Court in granting injunctive Orders in favour of the Respondent in which the Court stated that the bone of contention was whether the Respondent was entitled to a share of estate of the deceased on account of the fact that the deceased held the land in trust for her father who was an objector a fact that the Appellants did not deny and therefore the Respondent had established a prima facie case with probability of success .
13. The only issue for determination is whether the trial Court properly exercised discretion in granting the relief. It is trite law that the appellate Court will not interfere with the Courts exercise of discretion unless it is proved that the Court took into account an irrelevant matter which it ought to have or not taken into account or failed to take into account relevant matters or misapprehended the applicable law or evidence.
14. The issue before the Court is whether the trial Court exercised his discretion judiciously, meaning without caprice or whim or sympathy and on a sound reasoning with the purpose of doing justice to parties.
15. The jurisprudence on injunction seems to be now well settled in Kenya flowing from *Giella versus Cassman Brown* (1973) EA 358 that the triple requirement of prima facie case, irreparable injury and a balance of convenience.
16. The trial Court found that the Respondent had established a prima facie case with a probability of success considering that the land was her sources of income and that it would be difficult to calculate her loss and that being the daughter of the objector she was entitled to a share should the trust be established.
17. This was an exercise of the Courts discretion which is defined in the Black's Law Dictionary (Tenth Edition ) as the exercise of judgement based on what is fair under the circumstances and guided by the rules and principles of law and as was stated in *United India Insurance Co Ltd v East Africa Underwriters (Kenya) Ltd* [1985] EA, the Court of Appeal will not interfere with the exercise of discretion simply on the grounds that its members if sitting in the first instance would or might have given different weight to that given by the judge to various factors of the case.
18. I therefore find no merit on the Appeal herein which I hereby dismiss. The injunction shall remain in force pending the hearing and determination of the objection proceedings if the same has not been concluded in Succession Cause No 202 of 1988, the original copy which was not produced to the Court and was therefore not able to confirm the status thereof as at the time of this judgement.
19. Having dismissed the appeal, the order of stay granted on the 15<sup>th</sup> August 2014 has no leg to stand on. The parties should therefore proceed with the objection proceedings to its logical conclusion and a determination made thereon on merit.
20. This being a family matter each party shall bear their own cost of the appeal. And it is ordered.

**SIGNED DATED AND DELIVERED AT MURANGA THIS 6<sup>TH</sup> DAY OF JULY 2023**

**J. WAKIAGA**

**JUDGE**

**In the presence of :**

No appearance for the Applicant



Defendant – Present

Jackline – Court Assistant

