



**Muturi v Ciakuthii & 5 others (Civil Appeal E010 of 2020)  
[2023] KEHC 23059 (KLR) (3 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23059 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
CIVIL APPEAL E010 OF 2020**

**LW GITARI, J**

**OCTOBER 3, 2023**

**IN THE MATTER OF THE ESTATE OF THE LATE MUTURI  
KATUMUTA (DECEASED)**

**BETWEEN**

**SAMWEL MUTURI ..... APPELLANT**

**AND**

**ANGELICA CIAKUTHII ..... 1<sup>ST</sup> RESPONDENT**

**DENIS MUGENDI MUTURI ..... 2<sup>ND</sup> RESPONDENT**

**LILYS GATIRIA MURUNGI ..... 3<sup>RD</sup> RESPONDENT**

**SIMAON NJAGI MBARI ..... 4<sup>TH</sup> RESPONDENT**

**GEOFFREY MWANGI WAHUNGU ..... 5<sup>TH</sup> RESPONDENT**

**LUCY KIRIGO MUREU ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. Samwel Muturi, The Applicant Herein, Filed A Chamber Summons Application Dated 20<sup>Th</sup> December, 2022 Seeking An Order Directing The Land Registrar Tharaka Nithi County To Delete The Names Of The 5<sup>Th</sup> And 6<sup>Th</sup> Respondents, That Is, Geoffrey Mwangi Wahungu And Lucy Kirigo Mureu In The Land Parcel No. Karingani/ndagani/2585 And Insert The Name Of Samwel Muturi In The Land Parcel No. Karingani/ndagani/2585 As Per The Grant Thereof.
2. The said land parcel no. Karingani/Ndagani/2585, hereinafter referred to as “the suit property” formed part of the estate of the late Muturi Katumuta, hereinafter referred to as “the deceased”.



3. The Application Is Brought Before This Court Pursuant To The Provisions Of Rule 73 Of The Probate And Administration Rules (cap 160 Of The Laws Of Kenya), Article 159 Of The Constitution And Sections 23 And 26 Of The Law Of Succession Act (cap 160 Of The Laws Of Kenya).
4. Despite being duly served with the Application, none of the Respondents filed their responses thereto and as such, the same remains unopposed.

### **Analysis**

5. A grant of Letters of Administration in the estate was issued to Agelina Ciakuthii Muturi (the 1<sup>st</sup> Respondent) on 29/5/2006 and later confirmed on 11/10/2006. This grant has never been revoked or annulled. In the certificate of the confirmation of grant the estate of the deceased was distributed as follows:-

**Karingani/Ndagani/2579**

Kinyua Muturi Gatumuta - whole

**Karingani Ndagani/2388**

Kinyua Muturi Gatumuta - whole

**Karingani Ndagani/2586**

Kinyua Muturi Gatumuta - whole

**Karingani/Ndagani/2581**

Samuel Muturi - whole

**Karingani/Ndagani/2585**

Samuel Muturi - whole

**Karingani/Ndagani/2580**

Ediel Kirimi M'Ibwana - whole

**Karingani/Ndagani/2583**

Denis Mugambi Muturi - whole

**Karingani/Ndagani/2387**

Lawrence Mutembei Muturi - whole

**Karingani/Ndagani/2577**

David Mbaka Muturi - whole

**Karingani/Ndagani/2587**

David Mbaka Muturi - whole

**Karingani/Ndagani/2584**

Muthoni Muturi - whole

**Karingani/Ndagani/2578**

Muthomi Muturi - whole



**Karingani/Ndagani/2383**

Justin Njue Gatumuta - whole

**Karingani/Ndagani/2574 & 2575**

Angelina Ciakuthi Muturi - as trustee for the entire family of the late Muturi Katumuta

6. As per the confirmed grant that was confirmed on 11<sup>th</sup> October 2016, the suit property was among the properties that were distributed to the Applicant herein. The Applicant was therefore the rightful beneficiary of the suit property. However, the administrator caused the suit property to be transferred to a third party and the same subsequently went through two different owners before it was bought by and transferred in the joint names of the 5<sup>th</sup> and 6<sup>th</sup> Respondents herein.
7. In the instant application, the Applicant is seeking orders to effect the confirmed grant of letters of administration which distributed the suit property to him as his inheritance from the estate of his deceased's father.
8. The Law of Succession Act empowers this Court to entertain any application and to determine any dispute arising from any succession process in respect to the estates of a deceased person dying after the commencement of the Act and to the administration of estates of those persons. Section 47 of the Law of Succession Act provides:

“The High Court shall have jurisdiction to entertain any application  
and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:  
Provided that the High Court may for the purpose of this section be represented by resident magistrates appointed by the Chief Justice.”
9. On the other hand Rule 73 of the Probate and Administration Rules provides as follows:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
10. As I had stated in a previous ruling in this cause dated 10/2/2022 that the above Rule gives the Probate and Administration Court wide discretion to issue orders which are necessary in the interest of justice and prevent abuse of the process of the court. This Court is thus empowered to ensure that the estate of the deceased is identified, and the rightful beneficiaries identified and given their inheritance.
11. The 1<sup>st</sup> Respondent herein was duty bound as the administrator of the subject estate to ensure that all the beneficiaries got their rightful shares in which case, the Applicant was entitled to get the suit property but he did not. In the present application, the Applicant seeks to recover the suit property as part of his share of the estate of the deceased. In the circumstances, it is my view that it is in the interest of justice for this court to issue the order sought so that the Applicant can get his share from the estate of his late father.

**Conclusion**

12. For the reasons stated and noting that although the 5<sup>th</sup> and 6<sup>th</sup> respondent were given an opportunity to be heard and have failed to file a response or attend court, this application has merits. I order as follows:-
  1. I allow the application in terms of prayer No.3 on the Chambers Summons.



2. The Land Registrar Tharaka Nithi County is ordered to delete the names of Geoffrey Mwangi Wahungu and Lucy Kirigo Mureu from Land Parcel No. Karingani/Ndagani/2585 and insert the name of Samuel Muturi.
3. Costs in the cause.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 3<sup>RD</sup> DAY OF OCTOBER 2023.**

**L.W. GITARI**

**JUDGE**

