



REPUBLIC OF KENYA



**In re Estate of Grace Nyambura Kairu alias Nyambura Kairu (Deceased) (Succession Cause 52 of 1995) [2024] KEHC 14151 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14151 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 52 OF 1995  
MA ODERO, J  
NOVEMBER 15, 2024  
IN THE MATTER OF ESTATE OF GRACE NYAMBURA  
KAIRU ALIAS NYAMBURA KAIRU (DECEASED)**

**RULING**

1. Before this Court for determination is the Summons dated 5<sup>th</sup> March 2024 by which the Applicants seek the following orders.
  - “ 1. Spent
  2. That pending interpartes hearing, this Honourable Court be pleased to issue an order of temporary injunction restraining the Respondent by himself, agents, employees, servants or anybody else acting on his behalf or under authority from interfering or dealing with the parcel of land title.
  3. That the costs of this suit be provided for.
2. The application was premised upon Section 4 and 9 of the Magistrates Court Act 2015, Order 51 Rule 1 and 3 of the Civil Procedure Rules 2010, Section 3, 3A of the *Civil Procedure Act*, Cap 21, Laws of Kenya. No Supporting Affidavit was filed.
3. The Respondent Lawrence Kairu Nyambura filed a Replying Affidavit dated 9<sup>th</sup> April 2024 opposing the application.
4. The matter was canvassed by way of written submissions. The Applicants filed the written submissions dated 18<sup>th</sup> September 2024 whilst the Respondent relied upon his written submissions dated 2<sup>nd</sup> October 2024.



## **Background**

5. The Succession Cause relates to the estate of the late Grace Nyambura Kairu (hereinafter ‘the Deceased’) who died intestate on 12<sup>th</sup> April 1978. A copy of the Death Certificate Serial No. 328811 is in the court file.
6. The Deceased was survived by the following persons;-
  - (a) Bernard Wachira Mbogo - Son
  - (b) Alfred Murefu Mbogo - Son
  - (c) Tabitha Wamahiga Grace - Son
  - (d) Francis Njuguna Grace - Son
  - (e) Lawrence Kairu Grace - Son
7. The estate of the Deceased comprised of the following assets
  - (i) Parcel of land known as Nyeri/watuka/738 – measuring 29 Hectares.
  - (ii) Parcel of land known as Nya/aberdare Forest North Block 1/777 – measuring 1.50 Hectares.
8. Following the demise of the Deceased Grant of letters of Administration Intestate was on 13<sup>th</sup> February 1997 issued to Bernard Wachira (the 1<sup>st</sup> Applicant).
9. Thereafter no further action was taken and on 14<sup>th</sup> June 2017 the suit was dismissed for want of prosecution.
10. Upon application by the Applicants the suit was reinstated on 22<sup>nd</sup> November 2023. Todate no summons seeking to confirm the Grant has been filed. Instead the Applicants filed this summons dated 5<sup>th</sup> March 2024 seeking injunctive orders as against the Respondent. As stated earlier the application was opposed.

## **Analysis and Determination**

11. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions on record.
12. The Applicants are seeking an interim injunction to prevent any interference (intermeddling) with the estate of the Deceased pending full distribution.
13. The grounds upon which an interlocutory injunction may be granted were set out in the case of *GIELLA -VS- CAMAN BROWN* [1973] EA as follows.

“The conditions for the grant of an interlocutory injunction are well settled in East Africa. First an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide on application on the balance of convenience.”



14. The definition of a Prima Facie Case was given in the case of Mrao Ltd -vs- First American Bank Of Kenya Ltd & 2 Others [2003] eKLR as follows:-

“In Civil cases a prima facie case is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation of rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. This is clearly a standard which is higher than an arguable case.”

15. The Applicants are the children of the Deceased and are beneficiaries of the estate. They therefore have locus standi in this matter.

16. The Applicants allege that the Respondent has been carrying out illegal activities on land Title No. Nyeri/Watuka/738. No Supporting Affidavit was filed to expound on what manner of ‘illegal activities’ the Respondent was engaging in. No evidence was availed to prove that any illegal activities were being conducted on the land in question.

17. The Respondent himself denies that he has been ruining crops, damaging houses, cutting trees and poisoning cows and dogs on the said property.

18. As stated earlier no evidence in form of photographs have been presented to the court. Moreover if such activities were being conducted by the Respondent then it amounts to breach of the law and the Applicants ought to have reported the matter to the police. No police abstract has been produced as an exhibit.

19. I find that the Applicants have failed to establish a prima facie case to warrant the issue of the injunctive orders being sought.

20. However notwithstanding the above finding it must be noted that this court is sitting as a probate court whose mandate is to supervise the distribution of the estate of the Deceased to the genuine beneficiaries. In order to carry out this mandate the law provides that the court may make such orders as may be necessary to protect and conserve the estate of the Deceased.

21. Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules and 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.

22. Similarly Rule 73 of the Probate and Administration Rules provides that:-

“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.”

23. I note that the Grant in this matter was issued way back in February 1997. To date the distribution of the estate has not been finalized.

24. In order to preserve the estate pending final distribution I direct that there be no interference and/or intermeddling with estate property by any party in this matter.



25. I further direct that the Administrator file a Summons for Confirmation of Grant within thirty (30) days setting out the mode of distribution of the estate. This being a family matter each side will bear their own costs.

**DATED IN NYERI THIS 15<sup>TH</sup> DAY OF NOVEMBER 2024**

**MAUREEN A. ODERO**

**JUDGE**

