



REPUBLIC OF KENYA



**KENYA LAW**

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**In re Estate of Cecilia Muthoni Gitau - Deceased (Succession Cause  
261 of 2007) [2024] KEHC 16222 (KLR) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16222 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 261 OF 2007  
HI ONG'UDI, J  
DECEMBER 17, 2024**

**IN THE MATTER OF THE ESTATE CECILIA MUTHONI GITAU – DECEASED**

**BETWEEN**

**ESTHER MUTHOMI WARA ..... OBJECTOR**

**AND**

**JOSEPH GITAU MUTHONI ..... 1<sup>ST</sup> PETITIONER**

**JOHN KURIA MAINA ..... 2<sup>ND</sup> PETITIONER**

**RULING**

1. The Objector Esther Muthoni Wara filed a summons for revocation/annulment of grant. The same is dated 27<sup>th</sup> July, 2022 and filed on 1<sup>st</sup> August, 2022. It was responded to vide a replying affidavit sworn by Joseph Gitau on 18<sup>th</sup> November, 2022. The Objector on 20<sup>th</sup> February, 2023 filed a further affidavit sworn on even date. Directions were issued on 16<sup>th</sup> March, 2023 by Chemitei J to the effect that the summons for revocation would be disposed of by way of viva voce evidence. Further directions have been issued on filing and service of witness statements which has been complied with. The objection was fixed for hearing for 7<sup>th</sup> December, 2023.
2. A Preliminary objection dated 6<sup>th</sup> December, 2023 was filed by the petitioners on 7<sup>th</sup> December, 2023 on the following grounds:
  - i. This honourable court has no jurisdiction to entertain the alleged dispute as the same falls within the preserve of the Environment and Land Court by virtue of Articles 162(2) and 165(5) of the *Constitution* of Kenya 2010 and is not among disputes contemplated under the Law of Succession to be handled by the High Court.
  - ii. That the reliefs being sought by the Objector cannot lie against the Respondents



- iii. The Objector's application is to that extent incompetent, bad in law, fatally defective and otherwise an abuse of the court process and should be struck out with costs to the Respondents.
3. The preliminary objection was heard by way of written submissions. They are dated 30<sup>th</sup> January, 2024 and 15<sup>th</sup> July, 2024 respectively.
  4. It is the argument of the petitioners/respondents that the objector's issue relates to the ownership of the suit, land and validity of the title deed issued to the late Cecilia Muthoni Gitau. They therefore submit that the matter which relates to title to land falls under the jurisdiction of the Environment and Land Court (ELC) and not this court sitting as a probate court.
  5. On the other hand, the objector argues that her claim is that she is entitled to half share of the deceased's estate, in place of her late mother Annah Wangu Wara.
  6. I have carefully considered the summons for revocation, the preliminary objection, both parties submissions and all other documents filed; I find the issue for determination to be whether the objector is a beneficiary of the estate of the late Cecilia Muthoni Gitau and whether the administrators herein ought to have considered her as such.
  7. This issue squarely falls under the jurisdiction of this court. The issue of title to land is not what is before this court for trial.
  8. Without getting into uncalled for issues, I have come to the conclusion that the summons for revocation should proceed to hearing which will address the issues being raised herein.
  9. The preliminary objection is hereby dismissed.
  10. Parties should now proceed to take a hearing date for the summons of revocation of grant dated 27<sup>th</sup> July, 2022, as per the directions issued on 16<sup>th</sup> March, 2023 by Chemitei J. Each party to bear its own costs.
  11. Orders accordingly.

**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 17<sup>TH</sup> DAY OF DECEMBER, 2024 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**  
**JUDGE**

