



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**(FAMILY DIVISION)**

**SUCCESSION CAUSE NO 539 OF 2016**

**IN THE MATTER OF THE ESTATE OF KIARIE NG'ETHE (DECEASED)**

**SCHOLASTICA KIMANI.....APPLICANT**

**VERSUS**

**JOHN NGETH'E KIARIE**

**EUNICE WANJIKU KIARIE.....OBJECTORS**

**R U L I N G**

1. In an application dated 16<sup>th</sup> February 2019 and filed the same day the Applicant Scholastica Kimani sought to be enjoined in this matter as an interested party on grounds that she had entered into an agreement with the deceased widow/administratrix one Hannah Kanuthu Kiarie (now also deceased) to purchase a portion of **L.R. No. Dagoretti/Waithaka 737** and had since made some payment, that it has come to her knowledge that she has not been included in the list of beneficiaries.
2. The Respondents object to the application firstly because there exists an **ELC Case No. 79 of 2019** between the same parties and touching on the same matter. Secondly, they contend that Applicant failed to comply with the term of the agreement between her and the deceased, and they are ready to refund the amounts the Applicant had paid.
3. Strictly speaking the Applicant is not a beneficiary or a survivor of the estate of the deceased, she could best be described as a liability to the estate.
4. The Applicant may have a genuine claim against his estate and she has sued the Administrators in the Land and Environment Cause No. 79 of 2019 seeking inter alia for specific performance.
5. The Respondents who acknowledge the agreement claim breach of the same on the part of the Applicant.
6. The cause in the Land and Environment court will determine the issue of the contract between the applicant and the deceased and breach of the same as alleged. The said court is best suited to do so.
7. A claimant cannot seek similar remedies against same parties based on similar facts in two different courts. Such an action would be an abuse of process.
8. For the above reasons I decline to enjoin the Applicant to this suit with a rider that in confirming the grant the portion of the asset being claimed by the Applicant be left undistributed to await the outcome of the ELC case.
9. Each party to bear own costs.

**Dated and Delivered in Nairobi on this 5<sup>TH</sup> day of DECEMBER, 2019**

**ALI-ARONI**

**JUDGE**