



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**PETITION NO. 5 OF 2012**

**ANNE NJOKI MUNGA.....1ST PETITIONER**

**ELIZABETH WACHEKE.....2ND PETITIONER**

**LOICE WANGOI .....3RD PETITIONER**

**PRISCILLAH WANGARI.....4TH PETITIONER**

**VERSUS**

**CLEMENT SOLOMON MUNGA.....1ST RESPONDENT**

**SAMUEL NG'ANGA.....2ND RESPONDENT**

**R U L I N G**

1. By his application dated 15/5/2018 the applicant prays for the following relief.

**1) That the injunctive or prohibiting orders registered against the following titles be lifted forthwith namely**

**a) Waitaluk/Kapkoi/Block 11/Gutongorio B 53, 54, 57, 58, 70, 71 and 6 respectively.**

**2. The proceedings herein be struck out with costs for being an abuse of the court process.**

2. The affidavit of the applicant sworn on the same date together with the annexures speak as much.

3. The respondent on their part filed grounds of opposition dated 1/11/2017 arguing that the motion was a mere denial and lacked credibility and it should be dismissed.

4. The facts and issues surrounding the petition herein are fairly straight forward. The petitioners/Respondent as well as the applicant herein are sisters and brothers. They are all the children of their late father Clement Munga Muna. The issue relating to their father's estate was determined vide Nairobi succession case No. 857/1992 where the grant issued on 12/11/1992 was confirmed on 28<sup>th</sup> January 1994 and rectified on 20/6/1994. Essentially the applicant herein together with his brothers and others benefited from the estate.

5. The respondent (the girls) apparently were not included in the estate. From the records available in the proceedings herein I am unable to see whether they mounted any objection proceedings in the succession cause.

6. However they did file this petition citing breach of their fundamental rights, namely, that as girls of the deceased they were not considered during the distribution of the estate.

7. It further appears that save for this cause, they have had multiplicity of suits pitting them and their brothers. These include

1) Succession cause No. 857/1993

2) Eldoret Judicial review No. 76/1995

3) Kitale CMCC No. 25/1994

4) Eldoret Misc. App No. 193/1994.

8. The above are not denied by the respondent. In the case at hand, they were able to obtain orders barring the applicant from dealing adversely with the aforesaid properties.

9. I have read the entire record herein and clearly, on the face of it, all that the respondents are agitating are their rights in their father's estate.

10. The issues dealing with a deceased estate are governed under the Succession Act Cap 160 Laws of Kenya. Although the petition herein is couched as Constitutional, it is in my view, respectively, an objection proceedings too the grant through the backdoor. To the extent that it relates to the estate of their late father, I do not find anything Constitutional.

11. The question of discrimination based on their gender is clearly addressed under the provisions of Section 29 of the Succession Act. The Act spells out who are the beneficiaries of the estate of a deceased person. A clear reading of the same does not demonstrate any biasness.

12. In the premises, I think that the proper forum for the respondent is through the succession process and not a constitutional petition. If they are entitled to the estate or not then the family court ought to render itself so.

13. In a nutshell this application ought to succeed and with it this entire petition must fail. The application dated 15/5/2018 is allowed. All orders restraining the applicants use of parcels number **Waitaluk/Kapko/Block 11/Gutongorio/(B) 53, 54, 57, 58, 70, 71 and 6** are hereby discharged and removed from the lands registers. The petition herein is hereby dismissed with no orders as to costs.

Orders accordingly.

**Delivered, signed and dated at Kitale this 11<sup>th</sup> day of December, 2018.**

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**H.K. CHEMITEI**

**JUDGE**

**11/12/18**

**In the presence of:**

**Ingosi for Gatheru Gathemia for Applicants**

**No appearance for the Respondents**

**Court Assistant – Kirong**

**Ruling read in open court.**