

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CORAM: R. MWONGO, J.**  
**SUCCESSION CAUSE NO. 442 OF 2012**

**(formerly SUCCESSION CAUSE NO. 135 OF 1989)**

**IN THE MATTER OF THE ESTATE OF NJEGA NJIRATA (DECEASED)**

JANET MAIRU MUGO.....1<sup>ST</sup> APPLICANT  
JOSEPHINE NJERI NTHIGA.....2<sup>ND</sup> APPLICANT  
AGNES IRUMA NTHIGA.....3<sup>RD</sup> APPLICANT  
MIRIAM NJOKI NJERU.....4<sup>TH</sup>  
APPLICANT  
LUCIANA MUTHONI NTHIGA.....5<sup>TH</sup> APPLICANT  
NAFTARY NYAGA NTHIGA (DECEASED).....6<sup>TH</sup> APPLICANT  
ANN IRIMBA NTHIGA (DECEASED).....7<sup>TH</sup>  
APPLICANT

**VERSUS**

NJERU NTHIGA.....1<sup>ST</sup> RESPONDENT  
CECILIA WANJA NTHIGA.....2<sup>ND</sup> RESPONDENT  
NEWTON NTHIGA NJERU.....3<sup>RD</sup>  
RESPONDENT  
SAPHANIA NYAGA NJAGI.....4<sup>TH</sup> RESPONDENT  
JEDIDA GACONI KIRANGO.....5<sup>TH</sup> RESPONDENT  
FIDESIE NAMU NYAGA.....6<sup>TH</sup> RESPONDENT  
ELIJAH KITHAKA.....7<sup>TH</sup> RESPONDENT

**RULING**

**The Notice of Motion dated 23<sup>rd</sup> March 2025**

1. What is before me is a Notice of Motion dated 23<sup>rd</sup> March 2025 through which the applicants seek orders that:
  - 1) That their application dated 21<sup>st</sup> November 2023 be allowed to be heard in the 1<sup>st</sup> instance; and
  - 2) That the costs of the application be provided for.
2. The application is based on grounds that the 1<sup>st</sup> respondent, who is the administrator of the estate of the deceased failed to disclose that the applicants were also children of the deceased because when he died, they were still minors. That instead, the 1<sup>st</sup> respondent included strangers in the estate as beneficiaries. They stated that when the said application came for hearing on 17<sup>th</sup> February 2025, their advocate failed to enter appearance to prosecute the matter for unknown reasons. The court allowed the parties to file an application but they

had already filed one dated 21<sup>st</sup> November 2023 which was not heard that day. They now want the said application to be heard because it raises weighty issues.

### **Replying Affidavit**

3. The 3<sup>rd</sup> and 4<sup>th</sup> respondents filed a replying affidavit opposing the applicants' application. It was their averment that the application dated 21<sup>st</sup> November 2023 had been determined by this court through a ruling delivered on 18<sup>th</sup> September 2024. In that ruling, this court found that the application dated 21<sup>st</sup> November 2023 was *res judicata*, having been determined earlier through another ruling delivered on 18<sup>th</sup> September 2019. They annexed copied of both rulings by this court, being constituted differently at the different points in time. They stated that the bar of *res judicata* applies to that application because it was already definitively determined.

### **Parties Submissions**

4. The application was canvassed by way of written submissions.
5. Through their submissions, the applicants summarized the orders sought through the application dated 21<sup>st</sup> November 2023 which sought revocation of the grant issued to the 1<sup>st</sup> respondent. They argued that their names were excluded from the list of beneficiaries because they were minors at the time. That it was unfair that strangers were named as beneficiaries to the estate yet the applicants were left out. According to them, this amounts to concealment of a material fact critical to the case, hence the grant should be revoked. They also contested distribution of the estate stating that the portion left to them through their mother was too small compared to the rest of the estate. This is why, they argued, the application dated 21<sup>st</sup> November 2023 should be heard and determined.
6. The 3<sup>rd</sup> and 4<sup>th</sup> respondents submitted that the court's decision delivered on 18<sup>th</sup> September 2024 partly allowed the preliminary objection and expressly stated that the application dated 21<sup>st</sup> November 2023 was *res judicata*. They stated that since the said decision remains unchallenged, the application herein cannot be allowed as it refers to an application that was already determined.

### **Issue for Determination**

7. The issue for determination is whether the Notice of Motion dated 23<sup>rd</sup> March 2025 has merit.

### **Analysis and Determination**

8. Through the application herein, the applicants seek that the court hears the application dated 21<sup>st</sup> November 2023 in the first instance. That application dated 21<sup>st</sup> November 2023 is a summons for revocation of the grant issued on 29<sup>th</sup> September 2021 and confirmed on 01<sup>st</sup> November 2021. Within the summons for revocation, the applicants also sought for a restraining order against the respondents. Before this summons for revocation, one Elija Kithaka Nthiga had filed another summons for revocation dated 13<sup>th</sup> December 2017 in the same estate, and it was heard and determined through a ruling delivered on 18<sup>th</sup> September 2019 where F. Muchemi, J. dismissed the summons for revocation.
9. When the applicants filed their summons for revocation dated 21<sup>st</sup> November 2023, the respondents responded by filing a preliminary objection on grounds that the application was *res judicata*. The court determined the preliminary objection through its ruling delivered on 18<sup>th</sup> September 2024. In her said ruling, L. Njuguna, J. found that the application dated 21<sup>st</sup> November 2023 was in fact *res judicata*.
10. Through the application herein, the applicants have again moved the court seeking that the summons for revocation dated 21<sup>st</sup> November 2023 be heard in the first instance. Through the court's previous rulings referred to hereinabove, the bar of *res judicata* is still in place regarding the summons for revocation dated 21<sup>st</sup> November 2023. In fact, L. Njuguna, J. in her ruling delivered on 18<sup>th</sup> September 2024, clearly discussed the issue of *res judicata* in light of that summons for revocation dated 21<sup>st</sup> November 2023.

### **Disposition**

11. In the foregoing circumstances, the application herein is a clear abuse of the court process as it calls for misappropriation of judicial time.
12. Accordingly, the application has no merit and it is hereby dismissed.
13. Orders accordingly.

**Delivered, dated and signed at Embu High Court this 15<sup>th</sup> day of October, 2025.**

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**R. MWONGO  
JUDGE**

**Delivered in the presence of:**

1. Ms. Ombongi holding brief for Rugaita for 3 - 4 Respondents

2. Kariuki – No longer on record
3. No Representation for all Petitioners
4. No Representation for Respondents 1,2,5,6 & 7
5. Francis Munyao - Court Assistant