



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT THIKA**  
**ELCC NO. E066 OF 2023**

**CHARLES KIMANI GATIBA.....1<sup>ST</sup>**  
**PLAINTIFF**

**PETER KUNGU WAITATHU.....2<sup>ND</sup>**  
**PLAINTIFF**

**VERSUS**

**RUTH KUNGU WANJIRU.....1<sup>ST</sup>**  
**DEFENDANT**

**FRANCIS NJOGU KUNGU.....2<sup>ND</sup>**  
**DEFENDANT**

***(Sued as the administrators of the Estate of PAUL KUNGU  
KABAGE)***

**RULING**

1. This Ruling is in respect of the application dated **11/02/2025** by the Plaintiffs Applicants which seeks the following orders:-

**(1) Spent.**

**(2) THAT the Honorable Court be pleased to make an order directing the County Surveyor Kiambu County, to conduct a survey and subdivision of the properties known as LR No Limuru/Ngecha T-98 and LR No. Limuru/Ngecha/177 into three (3) equal**

**portions, to give effect to Order (d) of the Judgment of Honorable Judge J.G Kemei delivered on 25<sup>th</sup> September 2023, within thirty (30) days of the issuance of this order.**

**(3) THAT costs of this Application be provided for.**

2. The application is supported by the Affidavit sworn on **11/02/2025** by the 1<sup>st</sup> Plaintiff also on behalf of the 2<sup>nd</sup> Plaintiff who granted him authority. The grounds on the face of the application and the Supporting Affidavit are that Judgement dated 25/09/2023 ordered the cancellation of the illegal subdivisions of LR No. Limuru/Ngecha T-98 into Limuru/Ngecha/T-413 and Limuru/Ngecha/T-414 with the title reverting back to Limuru/Ngecha T-98 and directed that Limuru/Ngecha T-98 and Limuru/Ngecha/177 be divided equally amongst the three families of the late Kungu Kabage.
3. However, since delivery of the Judgment and the Ruling delivered on 24/09/2024 the subdivision has not been done. That the Plaintiff has on two occasions written to the Defendants' Advocates proposing that the parties agree on a surveyor to conduct the survey and subdivision in the presence of representatives from the three families of the late Paul Kungu Kabage, late Waitathu Kabage and the late Gatiba Kabage but have received no response.
4. That the non-responsiveness and/or delay on the part of the Defendants has impeded the timely execution of the Court's

order which may precipitate unnecessary family disputes. Further that the beneficiaries of the pending subdivision have not been able to access, utilize or develop the property for their benefit.

5. The Respondents did not file a response to the application and at the time of writing this Ruling there was no response on record.

### **Submissions**

6. The Plaintiffs filed their submissions dated **27/03/2025** which I have considered. There are no submissions on record filed by the Defendants.

### **Analysis and Determination**

7. After considering the application, Supporting Affidavit and submissions, the only issue for determination is whether the orders sought are merited.
8. This matter was heard on 22/11/2021 and 22/09/2022 and Judgement in this matter was delivered on **25/09/2023**. The Court issued an order directing the Land Registrar to cancel the illegal subdivision of Limuru/Ngecha T-98 to Limuru/Ngecha T-413 and Limuru/Ngecha T-414 and revert back the land to its original state being Land Reference Limuru/Ngecha/T-98. Further that the Land Registrar should subdivide both parcels of lands equally amongst the three families and issue titles.

9. Order 22 Rule 29 (1) of the Civil Procedure Rules provides as follows;

***“Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.”***

10. I am not persuaded that the Applicants brought the application under the right Order and Rule but again paying undue attention to procedure would lead to one missing the target and goal which is the dispensation of justice see Article 159 (2).

11. Section 34(1) of the Civil Procedure Act provides as follows;

***“(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.”***

12. In the judicial decision of **Kipungar v Tamning & 3 Others (Land Case 181 of 2013) [2022] KEELC 3588 (KLR) (20 July 2022) (Ruling)** the Court while considering a similar post Judgement application where the Applicants

had sought an order that the District Surveyor proceeds to the ground and subdivides the land into equal portions held as follows;

***“7. When the Court rendered itself in the suit, it held, among other reliefs, that “the trust by the Plaintiff is hereby terminated and an order is given that the title held by the Plaintiff should be cancelled and new separate ones be issued in favour of the Plaintiff and the Defendants in equal shares. The decree could not differ from the prayers in the plaint. Thus, the argument by the Respondent that the prayer differed from that in the plaint was a misconception of the prayer sought in the instant application. Since the Court found that the title was to be divided in equal shares as between the Plaintiff and the Defendants/ Applicants herein, in my view, the prayer in the instant application is being sought to give effect to the decree of the Court. Such a prayer should not be inhibited by a Respondent who is not keen to obey the decree of the Court, to buy time.8.This Court therefore finds the application dated February 25, 2022 wholly meritorious and allows it with costs to the Applicants.”***

13. This Court in its Judgement delivered on 25/09/2023 issued the following orders;

- a. It is hereby declared that the Plaintiffs are entitled to customary trust rights in both parcels of land being Land Reference No. Limuru/Ngecha/177 and of Limuru/Ngecha T-98 (suit lands),**
- b. It is hereby declared that Paul Kungu Kabage, Deceased registered both parcels of land in his names to hold in trust for his two younger brothers; Waithathu Kanage and Gatiba Kabage,**
- c. An order do and is hereby issued ordering the Land Registrar to cancel the illegal subdivision of Limuru/Ngecha T-98 to Limuru/Ngecha/T-413 and Limuru/Ngecha/414 and revert back the land to its original state being Land Reference Limuru/Ngecha/T-98.**
- d. An order do and is hereby issued ordering the Land Registrar to subdivide both parcels of lands equally amongst the three families and issue titles thereof.**
- e. Mesne profits is disallowed for the reasons given in the Judgment.**

**f. Parties being related I make no orders as to costs.**

14. It is apparent that the prayers sought in the application under consideration are meant to give effect to the decree of the Court.
15. The Respondents did not file any response to the application.
16. It is my considered view that it is grossly unjust to deny the Plaintiffs/Applicants the fruits of their Judgment delivered over two years ago, and a decree extracted on 2/07/2025 where there is no application for stay nor appeal filed.

**Disposition**

17. Taking the foregoing into consideration, the application dated 11/02/2025 is hereby allowed in the following terms:
  - a) An order is hereby issued directing the County Surveyor Kiambu County, to conduct a survey and subdivision of the properties known as LR No Limuru/Ngecha T-98 and LR No. Limuru/Ngecha/177 into three (3) equal portions, to give effect to Order (d) of the Judgment of Honorable Judge J.G Kemei delivered on 25<sup>th</sup> September 2023, within thirty (30) days of the issuance of this order.***
  - b) Any costs arising from the subdivision shall be borne by the parties in equal portions.***
  - c) Each party shall bear own costs.***

It is so ordered.

**DATED, SIGNED AND DELIVERED AT THIKA THROUGH  
MICROSOFT TEAMS ON THIS 1<sup>ST</sup> DAY OF OCTOBER, 2025.**

.....  
**MOGENI J  
JUDGE**

**In the presence of:-**

Ms. Amwama holding brief for Mr. Kiprop for the 1<sup>st</sup> and 2<sup>nd</sup>  
Plaintiffs

1<sup>st</sup> and 2<sup>nd</sup> Defendants - Absent

Melita - Court Assistant

.....  
**MOGENI J  
JUDGE**