



**Gatekia & 3 others (Suing as the Legal Representative and Administrators of the Estate of Silas Gatekia M'Mwitari (Deceased)) v M'Mwitari (Environment & Land Case 14 of 2017) [2024] KEMC 120 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEMC 120 (KLR)

**REPUBLIC OF KENYA  
IN THE GITHONGO LAW COURTS  
ENVIRONMENT & LAND CASE 14 OF 2017  
AT SITATI, SPM  
JULY 26, 2024**

**BETWEEN**

**MERCY KANYIRI GATEKIA ..... 1<sup>ST</sup> PLAINTIFF  
PENINA NKIROTE MARETE ..... 2<sup>ND</sup> PLAINTIFF  
PURITY KAROKI MARETE ..... 3<sup>RD</sup> PLAINTIFF  
IRENE NTINYARI ..... 4<sup>TH</sup> PLAINTIFF  
SUING AS THE LEGAL REPRESENTATIVE AND ADMINISTRATORS OF THE  
ESTATE OF SILAS GATEKIA M'MWITARI (DECEASED)**

**AND**

**STANLEY IRIGA M'MWITARI ..... DEFENDANT**

**RULING**

1. By a notice of motion application dated 6<sup>th</sup> May, 2024 supported by an affidavit of similar date, the Applicants prayed for:
  1. That the Honourable Court be pleased to issue orders to the Lands Registrar Meru Central to dispense with the production of the original title deed for L.R. No. Abothuguchi/Ruiga/1866 to facilitate the transfer of ½ (half) share of the land to the plaintiffs Mercy Kanyiri Gatekia, Penina Nkirote Marete, Purity Karoki Marete And Irene Ntinyari.
  2. That this Honourable Court be pleased to issue orders and dispense with the production of the passport photo size photographs, PIN Certificate and national identity cards of the defendant herein Stanley Iriga M'mwitarito facilitate the transfer of ½ (half) share of the land to the plaintiffs Mercy Kanyiri Gatekia, Penina Nkirote Marete, Purity Karoki Marete and Irene Ntinyari.



3. That the Court Administrator of the Court be empowered to sign the application for consent of Land Control Board and transfer documents to facilitate the transfer of the land to the plaintiffs Mercy Kanyiri Gatekia, Penina Nkirote Marete, Purity Karoki Marete and Irene Ntinyari.
  4. That this Honourable Court be pleased to issue order for the removal of the inhibition dated 3/9/2015 to facilitate the transfer of ½ share of the land to the plaintiffs.
  5. That this Honourable Court be pleased to issue such further orders as may be necessary in this matter.
2. The applicants relied on 6 grounds as appeared in the 10 paragraphed supporting affidavit. The main contention was that after obtaining judgement in their favour on 8/2/2021 against the defendant, the said defendant had refused to transfer the title to their names as ordered by the court. It was contended that there was a need to vacate the inhibition order registered on the title to facilitate the said transfer.

### **The Defendant's Response**

3. By a replying affidavit dated 7<sup>th</sup> June, 2024 the respondent deposed that there had been appeal against the magistrate's judgement vide Meru ELC E042 of 2021 but this had been dismissed necessitating the filing of an appeal at the Court of Appeal No. 36 of 2023.
4. The applicants lodged a supplementary affidavit dated 25<sup>th</sup> June, 2024 annexing a ruling of the Court of Appeal in ELC E118 of 2022 dismissing the appellant (now defendant) application for stay of execution.

### **The Plaintiffs' Submissions**

5. The plaintiff lodged written submissions dated 26<sup>th</sup> June, 2024 in support of their application dated 6<sup>th</sup> May, 2024. It was submitted that contrary to the defendant's submissions that there was a pending appeal no. 36 of 2023 at Nyeri, there was no such appeal. The correct position was that the defendant/respondent had filed Appeal No. E118 of 2022 at the Court of Appeal for stay of execution but the application was dismissed by the Court of Appeal. The ruling in this regard was annexed to the supplementary affidavit.
6. It was thus submitted that the court should allow the present application to give effect to the decree in favour of the applicants.
7. The firm of Kiogora Arithi & Associates represented the plaintiffs/applicants while Maitai Rimita & Company Advocates represented the defendant/respondent.
8. The only issue to be determined is whether or not the applicants had made out a case to warrant the grant of the reliefs sought.

### **Determination**

9. The guiding rule for the completion of the distribution of the estate is to be found in section 83 of the [\*Law of Succession Act\*](#) which provides as follows:
  83. Duties of personal representatives
    - (g). within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all



matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.

10. From the record it is more than 3 years now since the Court issued the judgement in favour of the applicants. The inordinate delay in realizing the fruits of the judgement is clearly defeating justice.
11. Taking guidance from *John Simiyu Palanga (Deceased) & another v Chopkooe Koskei & another* [2018] eKLR (N.A. Matheka J.) where the Judge found that the Respondent was taking steps to defeat the Court orders in distribution of the land and authorized the High Court Deputy Registrar to sign the transfer documents, this Honourable Court is satisfied that there is merit in the present application. From the material placed before this Honourable Court, the court is satisfied that the Respondent is just deploying delaying tactics to prevent the applicants from inheriting their rightful share as ordered by the court.
12. In the result the court allows the application in the following terms:
  - a. That the Honourable Court hereby issues orders to the Lands Registrar Meru Central to dispense with the production of the original title deed for L.R. No. Abothuguchi/Ruiga/1866 to facilitate the transfer of ½ (half) share of the land to the plaintiffs Mercy Kanyiri Gatekia, Penina Nkirote Marete, Purity Karoki Marete and Ireene Ntinyari.
  - b. That this Honourable Court be pleased to issue orders and dispense with the production of the passport photo size photographs, PIN Certificate and national identity cards of the defendant herein Stanley Iriga M'mwitarito facilitate the transfer of ½ (half) share of the land to the plaintiffs Mercy Kanyiri Gatekia, Penina Nkirote Marete, Purity Karoki Marete and Ireene Ntinyari.
  - c. That the Court Administrator of the Court be empowered to sign the application for consent of Land Control Board and transfer documents to facilitate the transfer of the land to the plaintiffs Mercy Kanyiri Gatekia, Penina Nkirote Marete, Purity Karoki Marete and Ireene Ntinyari.
  - d. That this Honourable Court be pleased to issue order for the removal of the inhibition dated 3/9/2015 to facilitate the transfer of ½ share of the land to the plaintiffs.
  - e. That the costs of this application are allowed to the applicants.

It is so ordered. Right of appeal is 30 days.

**DATED, READ AND SIGNED AT GITHONGO LAW COURTS THIS 26<sup>TH</sup> DAY OF JULY, 2024**

=====

**HON. T.A. SITATI**

**SENIOR PRINCIPAL MAGISTRATE**

**GITHONGO LAW COURTS**

Miss Mugo Adv for the plaintiff

Miss Karwitha Adv HB Miss Rimita for the respondent.

Ronny Court assistant

