

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT SUCCESSION CAUSE NO. 120 OF 2009

IN THE MATTER OF THE ESTATE OF JOSPHAT MWANGI

KIIRU (DECEASED)

RULING

1. Before this Court for determination is the Notice of Motion dated **24th March 2025** by which the Applicant **EZEKIEL WACHIRA GITHIGE** seeks the following orders:-

“1. THAT the applicant be enjoined as a party to this suit.

2. THAT the Court be pleased to order the Respondents/

Administrators to effect the transfer of WARAZA SETTLEMENT SCHEME NO. 136 sold to the Applicant plus

the production of all necessary documents to effect the

transfer.

3. THAT in the alternative the court order the Deputy Registrar to sign the transfer documents and dispense with the execution of the Administrators.

4. THAT the cost of this application may be borne by the Respondent/Administrators.”

2. The Respondents opposed the application through the Replying Affidavit dated **14th April 2025** sworn by **JAMES KIIRU MWANGI**.

3. The application was canvassed by way of written submissions. The Applicant filed the written submissions dated **17th June 2025** whilst the respondent/Administrator relied upon their written submissions dated **24th June 2025**.

BACKGROUND

4. This succession cause relates to the estate of the late **JOSPHAT MWANGI KIIRU** (hereinafter the Deceased) who passed away on **24th June 2008**. A copy of the Death Certificate Serial No. **200652** was filed in Court on **18th February 2009**.

5. The Deceased was survived by **three (3) wives** and several children. The estate of the Deceased comprised of only one asset being land Parcel No. **NYERI/WARAZA/136**.
6. Following the demise of the Deceased Grant of letters of Administration Intestate was on **1st March 2018** made to **James Kiiru Mwangi, Chris Mungai Mwangi** and **Julius Njihia Mwangi**.
7. The Grant was duly confirmed on **1st March 2018**. The Applicant herein **Ezekiel Wachira Githige** alleges that pursuant to a court order made on **25th June 2018** he entered into a sale agreement with the Administrators of the estate to purchase **one (1) acre** out of **WARAZA SETTLEMENT SCHEME PLOT NO. 136** (hereinafter the Suit Property). That the parties agreed on a purchase price of **Kshs. 1.2 million** to be paid in instalments.
8. The Applicant claims that despite having paid the full purchase price as was agreed, the Administrators have refused to effect transfer of the **one (1) acre** portion to him. The Applicant prays to be enjoined in this suit in order to pursue his beneficial interest in the suit property.

9. The Respondents in their reply averred that they did not enter into any sale agreement with the applicant and are not aware of any court order sanctioning sale of estate property. That if the applicant paid out any monies to the Administrators then that money has been misappropriated by the said administrators. They urge the court to dismiss the application.

ANALYSIS AND DETERMINATION

10. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties.

11. The law relating to joinder of parties is found in **Order 1 Rule 10(2)**

of the **Civil Procedure Rules 2010** which provides that

“The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court be just, order that the name of any party improperly joined, whether as plaintiff or

defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectively and completely to adjudicate upon and settle all questions involved in the suit be added.”

12. In **JUDICIAL SERVICE COMMISSION -VS- SPEAKER of the NATIONAL ASSEMBLY [2013] eKLR** the court stated that

“an interested partyis a person with an identifiable state or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the court to make a determination favourable to his state in the proceedings”

13. In the case of **JOSEPH NJAU KINGORU -VS- ROBERT MAINA CHEGE & 3 others [2002] eKLR**, Hon. Lady Justice Nambuye (retired) set out the principles to be

considered by a court in deciding on an application for joinder as follows

“(i) He must be a necessary party.

(ii) He must be a proper party.

(iii) In the case of the defendant there must be a relief

flowing from that defendant to the plaintiff.

(iv) The ultimate order or decree cannot be enforced

without his presence in the matter.

(v) His presence is necessary to enable the court

effectively and completely adjudicate upon and settle all questions in the suit.”

14. It must be borne in mind that this Court is sitting as a **Probate Court** with the sole mandate of overseeing the distribution of the estate to the genuine heirs. At the outset it is not in dispute that the Applicant **is not** a child of the Deceased and therefore he **is not** a beneficiary to the estate of the Deceased. The applicant is what is normally referred

to in local parlance as a '**purchaser**' and it is in this capacity that he stakes a claim to the suit property.

15. The applicant is seeking to be enjoined in their succession cause. Ordinarily the only parties in a succession cause would be those who have '**locus standi**' in the matter. The applicant who is not executor/administrator nor a beneficiary to the estate would have no locus standi in his succession cause.
16. The Applicant avers that an acre out of the estate property was sold to him on the authority of a court order. That on **25th June 2018** the court authorized the administrators of the estate to dispose by way of sale **one (1) acre** out of the parcel of land known as **WARAZA SETTLEMENT scheme Plot No. 136** in order to raise funds to cover the costs of administration of the estate.
17. I have carefully and anxiously perused the record. I note that in a judgment delivered on **1st March 2018, Hon. Lady Justice Matheka** gave directions on how the estate was to be distributed. The court in addition made the following order.

“One acre of the estate to be sold at market rates to cover the cost of administration.”

18. The above order is the one the applicant is referring to as proof that the sale of one (1) acre was sanctioned by the court. The certificate of confirmed grant dated **1st March 2018** and rectified on **25th June 2018** also indicates that **one (1) acre** of the estate was to be sold at market rates to cover the cost of administration.

19. The applicant has annexed to his supporting affidavit dated **24th March**

2025 a copy of an Agreement for sale dated **13th June 2019** which agreement appears to have been entered into between the Applicant and the administrators of the estate.

20. The Applicant claims that pursuant to that sale agreement he did pay

into the estate account an amount of **Kshs. 1.2 million.**

However the

applicant has not tendered any proof of such payment and on their part

the Respondents deny having sold any land to the applicant and deny

having received any funds from the applicant.

21. As stated earlier the applicant not being a beneficiary to the estate has

no locus standi in this succession cause. The Applicant is not a necessary party in this succession cause. Further it cannot be said that the estate cannot be distributed to the genuine beneficiaries without the applicants involvement. The applicants complaint is against the administrators of the estate to whom he alleges he paid **Kshs. 1.2 million**. He should pursue the persons whom he claims to have paid.

22. It is clear that there exists a dispute between the estate and the

Applicant over the ownership of the **one (1) acre** parcel of land. That dispute is not one which this court sitting as a Probate Court has the mandate and/or authority to determine.

23. Matters relating to the ownership, use and occupation of land are now

under **Article 162** of the constitution mandated to determine by a specialized court being the **Environment and Land Court ('ELC')**.

24. **Section 13** of the **Environment and Land Court Act** provides for

the jurisdiction of that court as follows:-

13. Jurisdiction of the Court

(1) The Court shall have original and appellate jurisdiction

to hear and determine all disputes in accordance with

Article 162 (2) (b) of the Constitution and with the

Provisions of this Act or any other law applicable in

Kenya relating to environment and land.

(2) In exercise of its jurisdiction under Article 162 (2) (b)

**of the Constitution, the Court shall have power
to hear**

and determine disputes -

**(a) relating to environment planning and
protection climate issues, land use
planning, title tenure boundaries, rates,
rents, valuations, mining, minerals and
other natural resources;**

**(b) relating to compulsory acquisition of
land;**

**(c) relating to land administration and
management;**

**(d) relating to public, private and
community land and**

**contracts, choses in action or other
instruments**

**granting any enforceable interests in
land; and**

**(e) any other dispute relating environment
and land**

**[Rev. 2012] No. 19 of 2011 Environment
and Land**

Court 9 [Issue 1].

25. Therefore, the correct and proper forum before which the Applicant

ought to ventilate his claim to the suit land is **ELC**. The **Environment**

and Land Court is the only court exclusively mandated by law to

determine the question of '**ownership**' of the suit land.

26. In **RE ESTATE OF STONE KATHUBI MUIINDE (Deceased)** [2016]

eKLR Hon. Justice William Musyoka held that:-

“Such claims to ownership of alleged estate property, as

between the estate and a third party, should be resolved

through civil process in a civil suit property brought before

a civil court in accordance with the Provisions of the Civil

Procedure Act and Civil Procedure Rules. This could mean

filing suit at the magistrate's courts, or at the Civil or

Commercial Divisions of the High Court, or at the

Environment and Land Court. If a decree is obtained in such

suit in favour of the claimant then such decree should be

presented to the probate court in the succession cause so

that that court can give effect to it.”

27. Similarly in **RE ESTATE OF MBAI WAINAINA (Deceased) [2015]**

eKLR the court held that

“.....The mandate of the probate Court under the law of succession Act is limited. It does not extend to determining issues of

ownership of property and determination of trusts. It is not a matter of probate Court being incompetent to deal with such issues but the provisions of the law of succession and the relevant subsidiary legislation do not provide a convenient mechanism for determination of some issues. A party who wishes to have such matter resolved ought to file a substantive suit to be determined by the Environment and Land Court. Consequently, and for the reasons above stated, I wish to find and hold has no mandate to resolve the proprietary interest on land based on the alleged trust.” [emphasis my own]

28. Finally I note that the applicant is seeking to be enjoined as a party to

this succession cause. However the application comes too late in the

day as his claim has effectively been overtaken by events given that the

Grant was confirmed on **1st March 2018.**

29. This application was filed in **March 2025** which is **seven (7)** years

after the Grant had been confirmed. The applicant ought to have acted much sooner. The confirmed Grant remains valid and

enforceable as is. No party has made any application to revoke and/

or review the confirmed grant.

30. Accordingly I do find and hold that the Applicants claim to **one (1)**

acre out of land parcel **WARAZA SETTLEMENT SCHEME PLOT NO. 136** can only be determined in the **Environment and Land Court**. In the premises the Notice of Motion dated **24th March 2025** seeking enjoinder to this succession cause is found to be without merit and is dismissed in its entirety. Costs to be met by the Applicant.

Dated in Nyeri this 7th day of November 2025.

.....
MAUREEN A. ODERO
JUDGE

ORIGINAL