

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**FAMILY DIVISION**  
**PROBATE & ADMINISTRATION CAUSE 109 of 2023**

***IN THE MATTER OF THE ESTATE OF PAUL GICHERU ALIAS PAUL NJOROGE GICHERU (DECEASED)***

**IAN NJOROGE** ..... **APPLICANT**

**VERSUS**

<b>RUTH NYAMBURA WOKABI</b>	.....	<b>1<sup>ST</sup> RESPONDENT</b>
<b>ALLAN NJOROGE GICHERU</b>	.....	<b>2<sup>ND</sup> RESPONDENT</b>
<b>ALVIN KAMAU GICHERU</b>	.....	<b>3<sup>RD</sup> RESPONDENT</b>

**RULING**

1. Before the Court is Summons dated 2 August 2024 seeking the following orders:
  - (i) Spent;
  - (ii) That a temporary injunction be issued restraining the Respondent, her servants or agents from selling, transferring by way of transmissions and in any way causing subdivision of land parcel ELDORET MUNICIPALITY/ BLOCK 13/542 until the hearing and determination of this Application *inter partes*;
  - (iii) That a temporary injunction be issued restraining the Respondent, her servants or agents from selling, transferring by way of transmissions

- and in any way causing subdivision of land parcel ELDORET MUNICIPALITY/ BLOCK 13/542 pending the hearing and determination of the objection proceedings by the Applicant;
- (iv) That the further Partial Confirmed Grant allowed on 31 July 2024 to the Respondent herein be revoked and annulled and a fresh grant be issued.
  - (v) That the proceedings undertaken in the matter on 31 July 2024 be set aside;
  - (vi) That the costs of this Application be borne by the Respondent.
2. The Deceased was a senior and prominent Advocate of the High Court of Kenya, a fact that adds a layer of solemnity to these proceedings. He died intestate on 26 September 2022. Following his demise, the administration of his estate has unfortunately descended into acrimony, pitting his widow and acknowledged sons (the Respondents) against a claimant asserting paternity and beneficial interest (the Applicant), supported by the Deceased's own mother, Josephine Wambui Njoroge.
3. The core grievance before this Court is the Applicant's contention that the Respondents, acting in concert and with calculated opacity, procured a Further Partial Confirmed Grant on 31 July 2024. This Grant authorized the sale of a prime asset, Eldoret Municipality/Block 13/542, which the Applicant claims was specifically gifted to him by the Deceased. The Applicant avers that this Order was obtained fraudulently, in his absence, and without service of a Hearing Notice, effectively disinheriting him before his substantive objection could be heard.
4. Conversely, the Respondents frame the issue as one of desperate necessity. They paint a picture of an estate that is asset-rich but cash-poor, with Beneficiaries facing the truncation of their university education in the United Kingdom due to fee arrears. They characterize the Applicant as a stranger

and an obstructionist whose interventions are designed to hold the legitimate family at ransom.

5. On 6 February 2024, a Grant of Letters of Administration Intestate was issued to the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents. On 4 April 2024, a Partial Certificate of Confirmation of Grant was issued by consent. This initial partial Grant covered specific undisputed assets, including shares in Cedar Dairies Farm Ltd, Motor Vehicle KCG 242M, and Malik Development Ltd. Notably, Eldoret Municipality/Block 13/542 was not included in this initial distribution.
6. The Applicant, together with his grandmother (the Deceased's mother), filed an Objection to the confirmation of the Grant. They contended that they were left out as dependents and that certain properties were omitted from the inventory. The Applicant specifically asserted a beneficial interest in Eldoret Municipality/Block 13/542, claiming it was left to him by his father. He also raised issues regarding Pioneer Ngeria/Block EATEC/6275, which he claims was left to his grandmother.

### **The Applicant's Case**

7. The Applicant's case is anchored on the principles of natural justice and protection from disinheritance. The Applicant avers that the proceedings of 31 July 2024 were secret. He contends that after the abortive session on 29 July 2024, where the file was missing, the Respondents and the Court proceeded on 31 July without notifying him. He argues this constitutes obtaining a Grant by concealment of a material fact—namely, the existence of an active Objector who had been present in Court just 2 days prior.
8. The Applicant argues that authorizing the sale of the specific property he has claimed in his Objection renders the Objection proceedings nugatory. If the land is sold, his inheritance is destroyed before his status is even determined.

9. To counter the "stranger" narrative, the Applicant annexes a Certificate of Birth (Entry No. 664983) issued on 10 March 1999, which indicates Paul Gicheru Njoroge and Mary Wambui Njoroge as his father and mother, respectively. This, he argues, establishes his *locus standi* as a son and beneficiary.
10. The Applicant provides a Certificate of Official Search showing the property was registered to Paul Gicheru on 20 April 2008. He asserts this property was promised to him, distinct from the assets left to the other sons.
11. The Applicant submits that the estate has other assets that could be liquidated for school fees, specifically Nakuru Cedar Lodge/220, which he values at over Kshs 90 million. He questions why the Administrators are fixated on selling the disputed property rather than the undisputed high-value assets.

### **The Respondents' Case**

12. The Respondents oppose the Application with equal vigor. The 1<sup>st</sup> Respondent avers that her sons (Allan, Alvin, and Alex) are students in the United Kingdom. Since the Deceased's death in 2022, fees have accumulated. Allan has allegedly missed two years of university. They rely on Article 53 of The Constitution, arguing that the children's right to education overrides the Applicant's procedural complaints.
13. The Respondents categorically deny knowing the Applicant. They assert he was never introduced by the Deceased during his lifetime. As evidence, they attach a Funeral Program which lists the "Marriage and Family" as Ruth and her three sons, excluding the Applicant. They argue the Applicant is an afterthought introduced by the grandmother.

14. The Respondents dispute the valuation of the Nakuru Cedar Lodge property, describing it as undeveloped land that cannot raise the alleged Kshs 90 million or be liquidated quickly enough to meet the September school deadlines. They insist the Application dated 12 June 2024 was properly before the Court. The Respondents argue that the Applicant's counsel was aware of the urgency and that the hearing on 31 July 2024 was a consequential order flowing from the certified urgency.

### **Analysis & Determination**

15. I have carefully reviewed the Application, Affidavits and submissions.
16. The crux of the Applicant's grievance is that he was condemned unheard. The principle of *Audi Alteram Partem* (hear the other side) is the bedrock of natural justice and a constitutional imperative under Article 50(1) of The Constitution.
17. The factual record regarding service is damning. The Applicant was served for the 22 July 2024 hearing. The matter was adjourned to 29 July 2024. On 29 July 2024, the parties were present, but the Court did not call the matter. The file was "in chambers". The matter was then handled on 31 July 2024. Crucially, there is no evidence on record—no Affidavit of Service, no Hearing Notice—demonstrating that the Applicant was notified that the matter had been moved to 31 July 2024.
18. The cases of ***Panchal Trading (K) Limited v NF Metals Corporation- [2021] eKLR***, and ***Tana Trading Limited v National Cereals and Produce Board [2015] eKLR*** buttress the position that failure of the service of process is not a mere technicality.

19. The Respondents argue that the Applicant was aware of the proceedings generally. However, general awareness of a suit does not equate to specific notice of a hearing date. When the court session of 29 July 2024 failed to materialize, it was incumbent upon the Court Registry or the Respondents' Advocates to formally notify the Applicant of the new date (31 July 2024).
20. Proceeding on 31 July 2024 in the absence of the Objector, who had actively participated in previous sessions, albeit with adjournments, constituted an ambush. The screenshot of the Judiciary Portal confirms the listing for the 29 July 2024 and then a sudden update to "Ruling date given." This corroborates the Applicant's claim of a procedural irregularity.
21. I, therefore, find that the proceedings of 31 July 2024 were conducted in breach of the rules of natural justice. The Order allowing the sale of the land was an *ex parte* order disguised as an *inter partes* Ruling, obtained without due notice to the affected party.
22. Section 76 of the Law of Succession Act empowers this Court to revoke or annul a grant on specific grounds. The relevant subsections are:
  - 76. Revocation or annulment of grant*
  - A grant of representation... may at any time be revoked or annulled if the court decides...*
  - (a) that the proceedings to obtain the grant were defective in substance;*
  - (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;*
23. Proceedings are defective in substance if they lack essential validity. In ***Re Estate of Prisca Ong'ayo Nande (Deceased) [2020] KEHC 6553 (KLR)***,

the court held that a grant confirmed without the participation of all beneficiaries or excluding objectors is defective.

24. Here, the Further Partial Confirmed Grant purported to distribute Block 13/542. This precise asset was the subject of the Applicant's pending Objection. To confirm the Grant regarding a disputed asset before determining the dispute itself is a procedural absurdity. It puts the cart before the horse. The validity of the partial Grant was contingent upon the resolution of the objection. By bypassing the objection, the proceedings became defective in substance.
25. The Applicant alleges the Respondents acted secretly. While the Application was filed, the hearing was conducted in a manner that excluded the Applicant. Did the Respondents' Counsel inform the Court on 31 July 2024 that the Objector was present on 29 July 2024 and might be waiting for a notice? If not, there was a concealment of a material fact—namely, the active opposition of a party claiming interest.
26. The Court can revoke a confirmed Grant where the administrator concealed the existence of a protest. Obtaining an order for sale *ex parte* while knowing an objection exists is a form of procedural fraud.
27. The Applicant seeks to restrain the sale of Eldoret Municipality/Block 13/542. The power to grant such an injunction flows from Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, which give the Court inherent power to make orders for the ends of justice.
28. The test for an interlocutory injunction is established in ***Giella v. Cassman Brown & Co. Ltd EA 358: Prima Facie Case, Irreparable Injury and Balance of Convenience.***

29. The Respondents dismiss the Applicant as a stranger. However, the Applicant has produced a Certificate of Birth naming Paul Gicheru Njoroge as his father. Under Section 118 of the Evidence Act, this certificate is *prima facie* evidence of the facts therein.
30. The Respondents rely on a Funeral Program which excludes him. In law, a funeral program is a social document, not a legal one. It cannot override a statutory document like a Birth Certificate. Until the Respondents successfully challenge the Birth Certificate (e.g., through DNA testing or annulment of the entry), the Court must treat the Applicant as a putative beneficiary. He has a *prima facie* right to protect the estate.
31. The subject matter is land. Land is unique. If Block 13/542 is sold to a *bona fide* purchaser for value without notice, it is gone forever. If the Applicant later wins his paternity case, he will have lost his specific inheritance. Damages are rarely an adequate remedy for the loss of ancestral or specific land. This constitutes irreparable injury.
32. The Court must weigh the Respondents' need for school fees against the Applicant's risk of disinheritance. The Respondent's position is the immediate need for cash for education. The Applicant's position is permanent loss of asset.
33. The Respondents admit they have other assets. They claim the Nakuru land is overvalued, but they do not deny owning it. A prudent administrator should liquidate undisputed assets first. The fixation on selling the disputed asset raises questions of good faith. The balance of convenience tilts in favour of preserving the *status quo* until the dispute is resolved.
34. The Respondents invoke Article 53 of The Constitution, which protects children. The Beneficiaries are in university. Allan Njoroge Gicheru and Alvin

Kamau Gicheru are adults. While they are dependents under Section 29 of the Law of Succession Act, they are not children under Article 53 (which defines a child as under 18).

35. Even if they were children, Article 53 does not suspend Article 50. The best interest of the child is paramount in matters concerning the child, but it is not a license to trample on the property rights of others without a hearing. You cannot feed one child by illegally selling the food of another. The Court must ensure all beneficiaries are treated fairly.
36. Section 45 of the Law of Succession Act prohibits intermeddling. While the Respondents are administrators, their authority is fiduciary. Dealing with the estate in a manner that prejudices a potential beneficiary constitutes waste.
37. By attempting to rush the sale of the specific property claimed by the Objector, behind the Objector's back, the Administrators are skirting dangerously close to the definition of waste—dissipating the estate's corpus before distribution rights are settled.
38. The estate is not destitute. There are multiple assets. The decision to sell the only asset claimed by the Applicant, rather than the undisputed shares or the motor vehicle, supports the granting of an injunction to stop that specific sale.
39. For the reasons expounded above, I find merit in the Application dated 2 August 2024. I hereby make the following Orders:
  - (i) The proceedings conducted on 31 July 2024 and the Orders issuing therefrom are hereby set aside *ex debito justitiae* for being procedurally defective and obtained in breach of the Applicant's right to a fair hearing.

- (ii) The Further Partial Confirmed Grant issued on or about 31 July 2024 (or dated 21 July 2024) which included Eldoret Municipality/Block 13/542 is hereby revoked and annulled pursuant to Section 76(a) and (b) of the Law of Succession Act.
- (iii) A temporary injunction is hereby issued restraining the Respondents/Administrators, whether by themselves, their servants, agents, or anyone acting on their behalf, from selling, transferring, charging, subdividing, or in any way dealing with land parcel Eldoret Municipality/Block 13/542 pending the hearing and determination of the Applicant's Objection.
- (iv) The Certificate of Confirmation of Grant dated 4 April 2024 remains in force regarding the undisputed assets listed therein.
- (v) The Applicant's Objection shall be set down for hearing on a priority basis. Parties are at liberty to apply for directions regarding DNA testing if paternity remains contested.
- (vi) The costs of this Application shall be in the cause.

**DATED AND DELIVERED AT NAIROBI THIS 18 DAY OF DECEMBER 2025**

**HELENE R. NAMISI  
JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For Applicant: Mr. Mukabane  
For Respondents: No appearance  
Court Assistant: Lucy Mwangi