

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**P&A CASE NO. 108 OF 2023**

**IN THE MATTER OF THE ESTATE OF THE ANN MUMBI NJOROGE  
- DECEASED**

**JOHN MUTHOGA GAITHUMA ..... 1<sup>ST</sup> APPLICANT**

**ISAAC NDUNGU GAITHUMA ..... 2<sup>ND</sup> APPLICANT**

**VS**

**SERLING SK NJOROGE..... RESPONDENT**

**RULING**

1. Before this Court is an application dated 3<sup>rd</sup> November 2025 brought under section 80 of the Civil Procedure Act Cap 21 and Orders 45 Rule (1)(a) & (b), Order 51 Rule 1 and all enabling provisions of the law seeking the following orders:

a) Spent

b) THAT the Court grants a temporary order for stay of execution of the Ruling dated 16<sup>th</sup> October, 2025 and consequential Orders therefrom pending hearing and determination of the instant Application.

c) THAT the Court reviews its Ruling dated 16<sup>th</sup> October, 2025 and consequential Orders arising therefrom.

d) THAT the cost of this Application be provided for.

2. The application is supported by an Affidavit sworn by John Muthoga Gaithuma dated 3<sup>rd</sup> November 2025 and is premised on the grounds that;

- i. The honourable court delivered a ruling dated 16th October, 2025 where at paragraph 45 the court ordered that, Zachary Githiomi be allocated 2 acres of Land Parcel No. Lainguse/Kiptenga Block 2 (Kamuyu) 239 of what would have been the Applicants' mother's share in the deceased's estate since the grant of letters of administration ad litem had been issued to him in Succession Cause No. E070 of 2024 in the Chief Magistrates Court at Thika.
- ii. That the same was a glaring mistake on the said ruling since as per the grant in succession cause No. E070 of 2024 in the Chief Magistrates Court at Thika, the letters of administration ad litem in the estate of Tabitha Mwihaki Gaithuma (the applicant's mother) were issued to John Muthoga Gaithuma and Issac Ndungu Gathiuma and not Zachary Githiomi.

- iii. The Applicants are apprehensive that they will suffer great prejudice if the ruling is upheld and executed, especially since Zachary Githiomi is not the administrator of their late mother's estate.
    - iv. That it is in the interest of justice that the plaintiff's application be certified urgent and heard ex parte in the first instance.
  3. The Applicant stated that he served the application upon the Respondent and that their affidavit of service sworn on 27<sup>th</sup> November 2025 is duly filed, a fact the court confirmed.
  4. I have considered the application as well the issues therein raised by the applicants in seeking that the court reviews its ruling dated 16.10.2025. I have perused the said ruling and at paragraph 45 thereof it is clear that the court intended that land parcel no. Lainguse/Kiptenga Block 2 (Kamuyu) 239 be allocated to the person that had been issued with a grant of letter of administration ad-litem for the estate of the deceased Tabitha Mwihaki Gaithuma. The court indicated the person to be Zachary Githiomi. However, upon a further perusal of the grant, it indicates the same was granted to John Muthoga Gaithuma and Issac Ndungu Githuma vide Succession cause no. 70 of 2024 at Chief Magistrate Court in Thika and not Zachary Githiomi.

5. This indeed is a mistake that amounts to an error on the face of the record as envisaged under Order 45 of the Civil Procedure Rules and therefore needs to be corrected.
  
6. In this regard, the court is satisfied that the application has merit and the same is therefore allowed. Consequently, paragraph 45 of the ruling dated 16.10.2025 is now hereby amended by deleting the name of Zachary Githiomi and inserting instead the names of John Muthoga Gaithimu and Isaac Ndungu Gaithuma as the persons who were granted the grant ad-litem to the Estate of their deceased mother. Accordingly therefore, the said paragraph 45 as amended is to now read as follows;

**“In the said Summons apart from distributing the Estate to the beneficiaries as already proposed in the Summons for Confirmation dated 20<sup>th</sup> May 2024 which is the subject matter of these proceedings it is also to clearly indicate that land parcel No. Lainguse/Kiptenga Block 2 (Kamuyu) 239 belonging to Tabitha Mwihaki Gaithuma out of the Estate of the said deceased, is allocated to John Muthoga Gaithuma and Issac Ndungu Githuma who has already been issued with a Grant of Letters of Administration Ad Litem for the Estate of his**

**deceased mother, the said Tabitha Mwihaki Gaithuma, to hold  
in trust for the rest of his siblings”.**

7. This being a family matter each party to bear its own cost.

**Read Dated and Signed at ELDORET on 15<sup>th</sup> December 2025.**

**E. OMINDE  
JUDGE**