

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**HIGH COURT SUCCESSION CAUSE NO. 891 OF 2012**

**IN THE MATTER OF THE ESTATE OF FRANCIS GICHURE**

**HINGA (DECEASED)**

**TERESA WAITHIRA GITHIRI.....**

**APPLICANT**

**VERSUS**

**BERNARD HINGA GICHURE.....1<sup>ST</sup>**

**RESPONDENT**

**SAMUEL NDERITU GICHURE .....2<sup>ND</sup>**

**RESPONDENT**

**RULING**

1. Before this Court is the Summons General dated **6<sup>th</sup> May 2025** by

which the Applicant **TERESA WAITHIRA GITHIRI** seek the following orders:-

**“1. SPENT.**

2. **THAT** pending the hearing and determination of this

application interpartes and the Summons General dated 3<sup>rd</sup> March 2025, this Honourable Court be pleased to issue a temporary injunction against the Respondents, restraining him from illegally and unlawfully evicting the Applicant or blocking the Applicant's access to the portion in which Joseph Githiri Gichure (now deceased) was bequeathed on Title Number Othaya/Kihugiru/1311.

3. **THAT** the OCS Othaya Police Station ensures compliance with the orders of the court.

4. **THAT** the costs of the application be provided for.”

2. The application was premised upon **Rules 49, 59 and 73 of the Probate and Administration Rules of the Law of Succession Act, Cap 160, Laws of Kenya** and was

supported by the affidavit of even date sworn by the Applicant.

3. The Respondents **BENARD HINGA GICHURE** and **SAMUEL NDERITU GICHURE** opposed the application through the Replying Affidavit dated **1<sup>st</sup> July 2025** sworn by the 2<sup>nd</sup> Respondent.
4. The application was canvassed by way of written submissions. The Applicant filed the written submissions dated **20<sup>th</sup> September 2025**, whilst the Respondents relied upon their written submissions dated **15<sup>th</sup> October 2025**.

### **BACKGROUND**

5. This Succession Cause relates to the estate of **FRANCIS GICHURE HINGA** (hereinafter the Deceased) who died intestate on **13<sup>th</sup> July 2001**. A copy of the Death Certificate Serial No. **631835** is annexed to the Petition for Grant of Letters of Administration Intestate dated **1<sup>st</sup> February 2010**.
6. The Deceased was survived by a widow **Regina Wangari Gichure** as well as several children. The two Respondents are both sons of the Deceased while the Applicant is the

widow of one **JOSEPH GITHIRI GICHURE** who was also a son to the Deceased.

7. Amongst the assets comprising the estate of the Deceased was the property known as Title Number **Othaya/Kihuguru/1311** (hereinafter 'the suit property').
8. Following the demise of the Deceased letters of Administration Intestate were on **12<sup>th</sup> April 2010** issued in the name of the widow of the Deceased. That initial Grant was duly confirmed on **15<sup>th</sup> November 2013** by which the parcel of land known as **Othaya/Kihuguru/1311** was to be distributed as follows:-

1. BERNARD HINGA GICHURE	OTHAYA/KIHUGIRU/ 1311	2/3 EQUALLY
2. JOSEPH GITHIRA GICHURE		
3. JANE MUTHONI MAI		
4. SAMUEL NDERITU GICHURE		
5. PAUL NGERA GICHURE		
6. CATHERINE WOTHAYA GICHURE		
7. EDWARD WACHIRA GICHURE		
REGINA WANGARI GICHURE		1/3 ABSOLUTELY

9. The widow in whose name the initial grant had been issued and confirmed unfortunately passed away on **19<sup>th</sup> August 2024**. Likewise one of the sons of the Deceased **Joseph Githira Gichure** (husband to the Applicant) also passed away on **16<sup>th</sup> March 2021**.

10. The initial grant was therefore revoked and fresh letters of administration intestate were issued jointly to the two respondents on **27<sup>th</sup> March 2025**. That new grant was duly

confirmed on the same date **27<sup>th</sup> March 2025**. Under the rectified grant the suit land was to be distributed as follows;-

a. Bernard Gichure	Hinga	LR NO. OTHAYA/ KIHUGIRU/88	To share 2/3 of The land equally
b. Teresa Githiri Francis Githire	Waithira Gichure		
c. Jane Muthoni Mwai			
d. Samuel Gichure	Nderitu		
e. Paul Ngera Gichure			
f. Catherine Wothaya Kairu Francis Maina	Gichure		
g. Edward Gichure	Wachira		
h. Bernard Gichure	Hinga		
i. Samuel Gichure	Nderitu		
j. Paul Ngera Gichure			
k. Edward Gichure	Wachira	To share 1/3 of the land equally	

11. The applicant who is the widow and legal representative of the estate of the late **Joseph Githiri Gichure** avers that she has been running a timber business on the portion of the suit land which had been allocated to her late husband. That there is pending before the court a summons dated **3<sup>rd</sup>**

**March 2025** seeking a review of the mode of distribution of the estate.

12. The applicant alleges that the Respondents as administrators of the estate of the Deceased have denied the applicant access to the portion of land allocated to her late husband and have issued eviction notice. That any interruption of the timber business will occasion irreversible loss to the Applicant. The applicant therefore prays that a temporary injunction issue pending the hearing and determination of the Summons dated **3<sup>rd</sup> March 2025**.
13. In their replying affidavit the respondents conceded that the applicant was the widow of their late brother **Joseph Githiri Gichure**. They state that the suit land measures **0.12 Hectares** or quarter of an acre.
14. The respondents state that following the issuance of the confirmed grant on **15<sup>th</sup> November 2013**, the Suit Property was sub-divided and distributed to all eight (8) beneficiaries.
15. That owing to the small size of the suit land the beneficiaries all agreed that the land be placed in the hands of **Joseph Gichure** (Deceased) with the understanding that he would

pay a sum of **Kshs. 10,000/=** to the remaining beneficiaries but the Applicant has declined to continue making the said amount as per their agreement.

16. The respondents submit that the property has been distributed to all eight (8) beneficiaries as per the confirmed grant. They urge that the applicant be directed to vacate the Suit land in order to facilitate its transmission to other beneficiaries. Finally the Respondents contend that this court is now '**functus officio**'.

#### **ANALYSIS AND DETERMINATION**

17. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties.
18. The first question that arises is whether the Applicant has locus standi in this matter. The applicant is not one of the biological children of the Deceased. She is however the widow of one **Joseph Githira Gichure** who was a biological son of the Deceased. This fact is not disputed by the Respondents. The Applicant has annexed a copy of the Death Certificate of her late husband Serial No. **1107713** to

her supporting affidavit dated **3<sup>rd</sup> March 2025** (Annexure '**BHG 3**').

19. The Applicant has filed this application in order to protect the share of the estate due to her late husband who was a direct beneficiary of the estate. In order to legally represent the estate of her late husband the Applicant must be in possession of a Grant of representation to her estate.
20. On **21<sup>st</sup> March 2025** the Court allowed an application for substitution of beneficiaries whereby the Applicant herein substituted her late husband as a beneficiary. As such I am satisfied that the Applicant has requisite locus in this matter.
21. I will now proceed to determine the question of whether the applicant has made out a sufficient case to warrant grant of the orders being sought. The Applicant herein seeks injunctive orders to prevent any dealings with the suit and pending the hearing and determination of the summons dated **3<sup>rd</sup> March 2025**.
22. The principles guiding the issuance of injunctive orders were set out in the celebrated case of **GIELLA -VS- CASMAN BROWN & CO. LTD [1973] EA** as follows:-

- (i) The Applicant must first establish a prima facie case with a probability of success.**
- (ii) The Applicant must demonstrate that he stands to suffer irreparable harm that cannot be adequately compensated by way of damages.**
- (iii) Where there is any doubt on the above then the Applicant must show that the balance of convenience tilts in his favour.**

23. The ruling in the **Giella** case was reinforced in the case of **NGURUMAN LIMITED -vs- JAN BONDE NIELSON & 2 Others [2004] eKLR** in which the Court of Appeal held as follows;-

**“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;**

- a. establish his case only at a prima facie level,**
- b. demonstrate irreparable injury if a temporary injunction is not granted, and**
- c. ally any doubts as to (b) by showing that the balance of convenience is in his favour. These**

**are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct, and logical hurdles that the applicant is expected to surmount sequentially.”**

24. The definition of what constitutes a prima facie case was given in the case of **MRAO LTD -VS- FIRST AMERICAN BANK OF KENYA LIMITED & 2 Others [2003] eKLR** as:-

**“a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter”**

25. The Applicant states that the respondents are in the process of evicting her from the portion of the suit property which belonged to her late husband. That by dint of the certificate of confirmed grant dated **15<sup>th</sup> November 2013** her late

husband was entitled to a portion of the parcel of land known as **Othaya/Kihuguru/1311**.

26. I have perused the confirmed grant which clearly shows that the suit land was to be distributed as follows:-

(i) 1/3 to **Regina Wangari Gichure** (widow of Deceased)

(ii) 2/3 to be shared equally between

- **Bernard Hinga Gichure**
- **Joseph Githira Gichure**
- **Jane Muthoni Mwai**
- **Samuel Nderitu Gichure**
- **Paul Ngera Gichure**
- **Catherine Wothaya Gichure**
- **Edward Wachira Gichure**

27. Therefore in effect the late **Joseph Githira Gichure** was entitled to a  $\frac{1}{7}$ <sup>th</sup> share of the 2/3 portion of the suit land.

28. In **RE ESTATE of STEPHEN KIPLAGAT MUTAI (Deceased) 2025 eKLR**, the Court held that the daughter-in-law of the Deceased had locus in the matter and a recognizable stake as she was filling the position of her late

husband who was a son of the Deceased and a beneficiary to the estate of the Deceased.

29. Although the Applicant claims to be in occupation of a portion of the suit land she has not stated with specificity how much of the suit land she is occupying. The Applicant cannot seek injunctive orders over the entire suit property as her late husband was not allocated the entire property.
30. For the above reasons I find that the Applicant has failed to establish a prima facie case. As such her application for injunctive orders has no merit. The same is dismissed in its entirety.
31. This being a family matter each side will bear its own costs.

**Dated in Nyeri this 20<sup>th</sup> day of February 2026.**

.....  
**MAUREEN A. ODERO**  
**JUDGE**

ORIGINAL