

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE NO. 62 OF 1997

IN THE MATTER OF THE ESTATE OF NJIRI GITHONGO
alias GERISHON NJIRI GITHONGO (DECEASED)

DUNCAN MUTHEE MWANIKI.....
ADMINISTRATOR

VERSUS

WATSON GATHEE RUGA.....
OBJECTOR

RULING

1. The matter came up for hearing. Upon perusing the file I note the claim is over a stale debt given in the 1960s. The same is time-barred by dint of Section 4(1)(a) and 7 of the Limitation of Actions Act. Section 4 of the said Act provides as follows:

(1) The following actions may not be brought after the end of six years from the date on which the cause of action accrued -

(a) actions founded on contract;

2. On the other hand, section 7 of the Limitation of Actions Act provides as follows:

An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.

3. The applicant sought to be given land that arose from an oral agreement allegedly made with the deceased way back in the 1960s. He sought either Ksh 40,000/= or five acres. I asked him whether the deceased had given him the land in the 1960s. He answered in the negative. The deceased herein died on 11.02.1987 at the age of 70 years. For 27 years, the applicant received nothing. He also did not claim for ten years after the deceased died.

4. The applicant did not enforce his claim. In any case, this is a claim for land of Kshs. 40,000/= under Article 162(2)(b) as read with Article 165(5) of the Constitution, from hearing the claim. Article 162(2)(b) of the Constitution provides as follows:

Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-

(a)

(b) The environment and the use and occupation of, and title to, land.

5. The injunction given to this court under 165(5) of the Constitution provides as follows:

The High Court shall not have jurisdiction in respect of matters—

(a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or
(b) falling within the jurisdiction of the courts contemplated in Article 162(2).

6. Then what should the court do with the case herein? The claim is not a claim of trust or possessory rights but a stale, unsubstantiated claim. The claim for repayment of a loan from the 1960s cannot be entertained at this late stage. It is also a false claim, as the file shows that the title to the land parcel number Ruguru/Kamariga/480 was registered in 1959, and the first loan was issued in 1974 from Kenya Commercial Bank Ltd for Ksh 40,000/=.
7. Such claims have clogged the courts and kept this matter in court since 1997 on the basis of unsubstantiated and fictitious claims. The applicant as a purported creditor has no right to deal with this matter. His application was dismissed in 2017 but appears to have been woken up in 2021 and continues to distract the finalization of the matter. The applicant Watson Gathee Ruga is not a beneficiary of the estate and has no place in this cause.
8. Consequently, the entire gambit of involvement of Watson Gathee Ruga and all documents filed herein are expunged from the record.
9. I notice that at one time, he misled the court into believing that he was a beneficiary. He was appointed an administrator,

a right he does not have. In the circumstances, the appointment of a stranger cannot be sustained. Rule 41(3) of the Probate and Administration Rules provides as follows:

Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceedings under Order XXXVI, rule 1 of the Civil Procedure Rules and may thereupon, subject to the proviso to section 71(2) of the Act, proceed to confirm the grant.

10. There has been no determination of the entitlement of Watson Gatheo Ruga. Consequently, he has no right to interfere with the beneficiaries. The beneficiaries to participate in confirmation are set out in Rule 40 of the Probate and Administration Rules, which provides as follows:

Where the holder of a grant which has not been confirmed seeks confirmation of the grant he shall apply for such confirmation by summons in Form 108 in the cause in which the grant was issued, supported by an affidavit in Form 8 or 9 exhibiting the grant together with an estate duty compliance certificate or other satisfactory evidence that no estate duty is payable and setting out the full names of the deceased person to whose estate the grant relates, and he shall satisfy the court that no application under Part III of the Act is pending.

(2) An application for confirmation by virtue of section 71(3) of the Act shall be by summons in Form 109 in the cause and the applicant shall in addition to the requirements of subrule (1) satisfy the court by affidavit in Form 18 that there is in existence no dependant of the deceased and that it is expedient in all the circumstances of the case that the grant be confirmed before the expiration of six months from its date of making.

(3) Save in the case of whole or partial intestacy or where the application is brought by virtue of section 71(3) of the Act, there shall be filed with the summons an affidavit containing the following information and particulars so far as known to the applicant-

(a) the names, ages and addresses of the children of the deceased by whom he was survived (whether or not they were being maintained by him immediately prior to his death) and of such of his parents, step-parents, grand-parents, grand-children whom he had taken into his family as his own, brothers, sisters, half-brothers and half-sisters, as were living at his death and were being maintained by him immediately prior thereto with full details of the manner and extent and for what period they were being or had been so maintained;

(b) in the case of a male deceased, his wife or wives or former wife or wives living at his death and, in the case of a female deceased, her surviving husband if he was being maintained by her immediately prior to her death with full details of the manner and extent and for what period he was being or had been so maintained.

(4) Where the deceased has died wholly or partially intestate the applicant shall satisfy the court that the identification and shares of all persons beneficially

entitled to the estate have been ascertained and determined.

(5) Where it appears to the principal registrar that an application has been made in any registry for the confirmation of a grant to the estate of a deceased in regard to which a caveat has been entered pursuant to rule 15 and is subsisting, the principal registrar shall send a notice in Form 111 to the caveator warning him of the making of the application and notifying him that if he wishes to object to the confirmation of the grant he must file in duplicate an affidavit of protest in Form 10 in the principal registry within fifteen days (or such longer period as the registry for reasons to be recorded may allow) from the receipt of the notice, in default of which the caveat shall cease to have effect in regard to the confirmation of the grant.

(6) Any person wishing to object to the proposed confirmation of a grant shall file in the cause in duplicate at the principal registry an affidavit of protest in Form 10 against such confirmation stating the grounds of his objection.

(7) The registrar shall, without delay, forward to the applicant a copy of each protest filed in the cause under subrule (5) or (6).

(8) Where no affidavit of protest has been filed the summons and affidavit shall without delay be placed by the registrar before the court by which the grant was issued which may, on receipt of the consent in writing in Form 37 of all dependants or other persons who may be beneficially entitled, allow the application without the attendance of any person; but where an affidavit of protest has been filed or any of the persons beneficially entitled has not consented in writing the court shall order that the matter be set down as soon as may be for directions in chambers

on notice in Form 74 to the applicant, the protester and to such other persons as the court thinks fit.

(9) In giving directions the magistrate's court may in a case before it either order that the application for confirmation should proceed in that court, or at the request of any party or of its own motion order that it be transferred to the High Court and give all necessary consequential directions in that behalf to enable the application to be dealt with by the High Court.

11. In the circumstances, the ship must be steered back to the family. This can only be done pursuant to section 76 of the Law of Succession Act. The grant issued to a stranger is useless and inoperative. The Letters of Administration *in situ* are hereby revoked.
12. In lieu thereof, I do hereby appoint John Kinga Njiri, ID No. 3355787, and Duncan Muthee Mwaniki, ID No. 26089116, as administrators. They should file a Summons for Confirmation of Grant in the next 60 days. All the beneficiaries of the estate to attend.

Determination

13. The court now makes the following orders:
 - a) Consequently, the entire gambit of involvement of Watson Gathee Ruga and all documents filed herein are expunged from the record.
 - b) Letters of Administration *in situ* are hereby revoked. In lieu thereof, I do hereby appoint John Kinga Njiri, ID No.

3355787, and Duncan Muthee Mwaniki, ID No. 26089116, as administrators.

c) The new administrators should file a Summons for Confirmation of Grant in the next 60 days.

d) All the beneficiaries of the estate are to attend for confirmation on 21st April, 2026.

DELIVERED, DATED and SIGNED at NYERI on this 5th day of February, 2026. Ruling delivered through Microsoft Teams Online Platform.

KIZITO MAGARE
JUDGE

In the presence of: -

Ms. Muriuki for the Petitioner/Applicant

Mr. Muchiri Wa Gathoni for Respondent

Court Assistant - Michael