



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 240 OF 1990

IN THE MATTER OF THE ESTATE OF JOSEPH GITHAE NGATIA alias
GATHAE NGATIA (DECEASED)

CATHERINE WAMBUGU GICHURU.....1ST APPLICANT

MARY WANGARI GICHURU.....2ND APPLICANT

VERSUS

MARTHA WANJIRA GITHAE.....1ST RESPONDENT

LANDS REGISTRAR NYANDARUA.....2ND RESPONDENT

RULING

1. Before Court for determination is the Application dated 17th July, 2025 where in the Applicants seek the following prayers

i) Spent

ii) That this Honourable Court be pleased to declare MARTHA WANJIRA GITHAE do surrender to the Lands Registrar Nyandarua County Lands Registry all the necessary documents for parcel of land Sabugo/Scheme 511 for registration to her name together with Catherine Wambui Gichuru and Mary Wangari Gichuru as the proprietor of the parcel of land for ease of subdivision to the respective beneficiaries.

- iii) That this Court be pleased to order for the cancellation of the whole process of subdivision, registration of parcel of land Sabugo/Scheme 511 and revert it to that original number for the process to follow the deceased last will pending the hearing and determination of this Application.**
- iv) That the title deed Sabugo/Scheme 511 be registered in the name of Martha Wanjira Githae, Catherine Wambui Gichuru and Mary Wangari Gichuru (as nominated Trustee of the 1st House) and all being the administrator of the estate.**
- v) That costs of this Application be provided for.**

Applicants' case

2. The Application is premised on the grounds on its face and the joint Affidavit in support sworn by the Applicant on the same date. It is averred that the applicants are wives of the late David Gichuru Githae (deceased) who was the 1st Administrator and the son of the deceased herein from the 1st house.
3. That their late husband passed on before conclusion of the succession of the deceased herein leaving the 1st Respondent, the widow of the deceased from the 2nd house, as the sole Administrator. That before the 1st administrator had passed on, he had initiated the sub division of parcel of land Nyandarua/Sabugo/511 to be divided between the two houses as per the certificate of confirmation of grant dated 27th July, 2016

4. That following the death of the late David Githae the 1st Respondent diverted the process and filed an Application for rectification of grant to remove one David Githae rather than filing succession as required by law since the deceased 1st administrator had already registered the parcel of land in his name.
5. That the 1.5 acres excised from each house adding up to 3 acres after subdivision was to go to the person that paid the settlement trust fund loan. That it was the 1st Administrator David Githae who had paid the loan therefore the acres excised should be returned to the houses of David Githae.
6. That the 1st Respondent concluded the estate of the deceased herein and the subject parcel was subdivided into 3 portions with their portion which was to go to their late husband was registered in the name of the 1st Respondent. That the title should be cancelled as the process was fraudulent.
7. That following the Ruling of 26th January, 2024 the family consented to them being nominated as trustee on behalf of David Gichuru Githae and wish to be enjoined in the estate of the deceased herein on behalf of their late husband.

1st Respondent's case

8. The Application was opposed by way of Replying Affidavit sworn on 6th October, 2025 wherein the 1st Respondent deposed that the Court on 3rd July, 2025 delivered a Ruling ordering her to register the parcel

of land Nyandarua/Sabugo/9394 in her name and in the names of the Applicants jointly.

9. That the Court rejected the Applicant's invitation to re-open distribution of the estate which the Applicants have attempted to do in this instant application
10. That she has done her part as an Administratrix save for complying with the orders of 3rd July, 2025 since the 90 days issued were still running by the time the instant application was filed and whereas she has been left to solely shoulder the financial burden.
11. That the Applicants want that the subdivided titles Nyandarua/Sabugo/9394, 9395 and 9396 restored to Nyandarua/Sabugo /511 and registered jointly but the grant dated 21st October, 2022 has never been revoked thus the subdivision remains lawful. That Prayer No. 4 is the Applicants backdoor attempt to insert themselves as co-executors
12. That, the Court was aware that the 3 acres were sold to offset the loan as confirmed in the certificate of confirmation of grant issued to David Gichuru Githae on 27th July, 2016. That the land was sold on 6th August, 1990 by consent of both houses and David Gichuru participated in the sale and on 7th August the loan was settled with the balance being paid to the late David Gichuru Githae and acknowledged on 11th June, 1991
13. That when the succession delayed, they were sued by the purchaser's son and on 15th December, 2010 orders were issued

confirming the purchaser's interests in the land. A decision that was never appealed or reviewed. That David Gichuru Githae having participated in the transaction bars the administrators of his estate from stating otherwise.

Applicants' submissions

14. The Applicant submits that, the grant issued on 21st October, 2022 was obtained fraudulently as the Applicants were never issued with any of the letters of administration. That the 1st Respondent deliberately withheld crucial information in that, the last Will of the deceased directed equal sharing of the estate between the two houses.
15. It also argued that by the 1st Respondent proceeding alone, she circumvented the legal safeguards designed to protect beneficiaries and should have instead challenged the Will before any grant was issued.
16. That, the subdivisions of Sabugo/Scheme/511 was carried out without authority and total disregard of the last Will, which actions of the 1st Respondent amount to intermeddling thus rendering the resultant transactions void. Reliance was placed in ***Gitau & 2 Others v Wandai & 5 Others***.
17. According to the Applicants, for the 1st Respondent to hold the share of the 1st house in trust for the heirs is contrary to the Will which will has not been challenged.

1st Respondent's Submissions

18. It is submitted that the Applicants being administrators of their husband's estate does not automatically make them co-executor's and relied on the case of ***Ogwari v Ibrahim Akinyi (Applicant) [2024] KEHC 4965 (KLR)*** where the Court held that it cannot sit on appeal of its own orders.
19. That the Applicants are estopped from going back on what their late husband agreed to under **Section 12** of the **Evidence Act**.
20. It is submitted that for title to be cancelled by the Court, it must have been obtained through fraud, mistake or omissions. That the Applicants have intentionally omitted to include a copy of the green card indicating the parcel was closed for subdivisions that the subdivision being part of the grant has never been revoked or annulled and remains lawful as no fraud or mistake has been established as was held in ***Kinyanjui Kamau v George Kamau [2015] eKLR***.
21. The 1st Respondent cited ***Koinange & 13 Others vs Charles Karuga Koinange [1986] KLR*** to submit that no ground has been given to warrant cancellation of the subdivision.

Analysis and determination

22. Having considered the Affidavits in support and against the Application and the Applicants' submissions, it is evident that the Applicants are seeking cancellation of subdivision, reversion to the

original parcel, and joint registration in their names together with the Respondent.

23. According to **Section 71** of the **Law of Succession Act**, a confirmed grant determines distribution of the estate of a deceased person. Alteration is only possible through revocation of an already issued grant under **Section 76** or review.
24. Further **Section 83** provides that Administrators must complete distribution in accordance with the confirmed grant.
25. It is not disputed that that **LR No. 204/511 Sabugo Scheme** was subdivided into 3 portions **Nyandarua/Sabugo/9394,9395** and **9396**. This Court on 3rd July 2025 directed that the share of the 1st House that is, **Nyandarua/Sabugo/9394** be registered in the joint names of the Applicants and the 1st Respondent. The Court further directed the execution of necessary transfer and registration forms within 90 days.
26. The Ruling was delivered on 3rd July, 2025 and the Application was filed less than thirty days from the said ruling. The Applicants have not demonstrated that the 1st Respondent has declined to register the property as per the said orders or acted fraudulently. Prayer No. 2 is premature and untenable.
27. The agreement dated 6th August, 1990 confirms that each house agreed to the sale of three (3) acres. The late David Gichuru Githae witnessed the said agreement. The Court orders in 2010 confirmed the purchaser's, **Grace Waithera Chege**, interest.

28. The Certificate of Confirmation of Grant dated 27th July, 2016 confirms that each house got the 8 acres and that each house would exercise 1.5 acres from their share to cater for settlement of the loan.
29. In the Further Rectified Certificate of Grant dated 21st October, 2022, the subject **LR No. 204/511 Sabugo Scheme** is distributed between the two houses equally with the agreed three (3) acres going to Edward Kamau Chege and David Muchau Chege reflecting the orders of 15th Dec 2010 by the **Land Dispute Case No. 27 of 2010**.
30. All these confirm that the three (3) acres were excised lawfully and that each house got its equal share. The law of succession is clear. Once a grant is confirmed, distribution follows. Alteration of such distribution can only be through revocation or review of the grant. The Applicants have not obtained such revocation.
31. On cancellation of titles, without revocation of the grant, such an order would be contrary to law and disruptive of settled rights.
32. The upshot of the foregoing is that the Applicants' Application dated 17th July, 2025 is without merit and is hereby dismissed with no orders as to costs.

It is so Ordered.

Signed, Dated and Delivered at Nakuru

On this 18th day of March, 2026.

**MOHOCHI S.M.
JUDGE**