



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
SUCCESSION CAUSE NO. 1 OF 1999
IN THE MATTER OF THE ESTATE OF THE LATE PERMINUS MWANGI
GITHENGI (DECEASED)

JOSEPH KAMAU MWANGI.....1ST APPLICANT

GITHENGI P. MWANGI.....2ND APPLICANT

-VERSUS-

PHYLLIS MUTHONI MWANGI.....1ST RESPONDENT

JUDY MUNTHONI MWANGI.....2ND

RESPONDENT

SIMON GITAHU KIBARAH.....INTERESTED

PARTY

RULING

1. This matter epitomizes the bad habit of weaponizing litigation where parties being dissatisfied with outcomes return to Court time and again to reargue issues.
2. For determination is the undated Petition filed on 2nd October, 2025 by one **Joseph Kamau Mwangi**, the 1st Applicant. Further the for determination is the Summons dated 26th November, 2025 **Githengi P. Mwangi** the 2nd Applicant in which they both pray for diverse reliefs.

Petition Dated 26th September 2025

3. The Petition is brought under section 26 of the Law of Succession Act where the 1st Applicant seeks an order for reasonable provision be made for him as a dependant out of the net estate of the deceased herein.
4. The Petition is supported by the Affidavit of **Joseph Kamau Mwangi** sworn on 29th September, 2025 where he avers that he is the son of the deceased herein and since the deceased passed, they as a family never consented to the choice of administrators or mode of distribution. That he has never consented to issuance of any grant or rectification thereto. He claimed his signature was forged and alleged fraud in the proceedings.
5. He added that he was not adequately provided for and that he is advanced in age and without a source of income and had children and grandchildren who depend on him, that he stands to suffer deprivation of their constitutional rights to property under **Article 40**.
6. He seeks a share of each of the properties of the deceased.

2nd Respondent's Replying Affidavit sworn on 14th October, 2025

7. She deposed that the estate of the deceased was duly administered and grant of letters of administration was confirmed and rectified over (15) years ago, the properties were distributed between the deceased two houses with each house receiving its rightful share as per the confirmed grant.

8. The deceased properties were equitably distributed between the 2 administrators to hold in trust for their respective houses as indicated in the confirmed grant issued on the 19th October, 2010. The Applicant belongs to the 1st House which was represented by the **Phylliss Muthoni** who is deceased. That any allegation of non-involvement or forged signatures is without proof and that such claims directly concern the administration of their own house and should be addressed within that house.

9. She also deposed that the administrator of the Applicant's house is deceased and has not been substituted, the Applicant ought to first apply for substitution or revival of the grant before making any claims of special provision. Further that reopening of the estate of the deceased at this stage would cause great prejudice and disturb settled titles and transactions, contrary to the principle of finality and protection of bonafide purchasers for value.

10. That the allegations raised are an afterthought meant to reopen a matter conclusively determined, and the applicant has not demonstrated forgery, fraud or his lack of involvement in the succession proceedings leading to confirmation of grant.

1st Applicant's Supplementary Affidavit sworn on 15th November, 2025

11. The 1st Applicant averred that the Respondents, after procuring the grant, proceeded to deal with the estate unilaterally and in total secrecy-registering various estate properties in their own names, selling others, and benefiting exclusively from the proceeds, while deliberately excluding other rightful beneficiaries, myself included.

12. That the attempt to excuse their conduct on the basis of "separate houses" is dishonest and legally untenable. The Grant was issued to them jointly, not as private representatives of isolated houses,

13. That neither him or members of his family received anything from the estate and the estate cannot be said to have been validly administered. He averred that it was in the interest of justice that this Court grant a reasonable provision and rectifies or alters the distribution to ensure fairness

Summons Dated 26th November, 2025

14. The 2nd Applicant seeks the following: -

- i) **Spent**
- ii) **Spent**
- iii) **THAT pending the hearing and determination of the Summons herein, this Honourable Court be pleased to issue an order of injunction in similar terms restraining the Respondents and/or Interested Party from alienating, transferring, charging, offering for sale, selling, leasing, disposing off, cultivating, pledging, subdividing or otherwise dealing with the of the property known as NAIVASHA/MWICHIRINGIRI BLOCK 4/22298 (formerly known as NAIVASHA/MWICHIRINGIRI BLOCK 4/3260 and/or any portions thereof)to the detriment of the Applicant.**
- iv) **THAT pending the inter partes hearing and final determination of these Summons, this Honourable Court be pleased to issue an order injunction restraining the**

Respondents by themselves, their agents, employees, nominees, assigns, and/or any other persons or authority howsoever claiming through the Respondents whatsoever from disposing off, leasing out, cultivating, pledging, sub-dividing, offering for sale, selling, transferring and/or howsoever dealing with the properties forming part of the Estate of the LATE PERMINUS MWANGI GITHENGI (DECEASED) which include, but is not limited to: NAIVASHA/MWICHIRINGIRI BLOCK 4/3260 (and any derives therein) NAIVASHA/MWICHIRINGIRI BLOCK 4/22298, KARAGITA S.H. GROUP PLOT NO. 56, KARAGITA S.H GROUP PLOT NO. 396/31/57, SHARES WITH NYONJORO FARMERS GROUP, MALEWA SCHEME PLOT NO. 602.

- v) **THAT pending the inter partes hearing and final determination of these Summons, this Honourable Court be pleased to issue orders of inhibition forbidding any dealings in all the properties forming part of the Estate of the LATE PERMINUS MWANGI GITHENGI (DECEASED) which include, but is not limited to: NAIVASHA/MWICHIRINGIRI BLOCK 4/3260 (and any derives therein) NAIVASHA/MWICHIRINGIRI BLOCK 4/22298, KARAGITA S.H. GROUP PLOT NO. 56, KARAGITA S.H GROUP PLOT NO. 396/31/57, SHARES WITH NYONJORO FARMERS GROUP, MALEWA SCHEME PLOT NO. 602.**

- vi) THAT the Orders issued herein be served upon the Land Registrar, Naivasha and/or the relevant Land Registry for compliance.**
- vii) THAT this Honourable Court be pleased to review, vary, and/or set aside the Certificate of Confirmation of Grant currently in force to reopen, reconsider, and redistribute the estate, and direct that all beneficiaries receive their respective shares in their own names, in accordance with the law, fairness.**
- viii) THAT this Honourable Court be pleased to reopen, reconsider, and redistribute the estate, and direct that all beneficiaries receive their respective shares in their own names, in accordance with the law, fairness.**
- ix) THAT in the alternative and/or together with the foregoing this Honourable Court be pleased to make reasonable provision for the Applicant as a dependent and firstborn child of the deceased.**
- x) THAT this Honourable Court be please to allocate the Applicant property (ies) known as NAIVASHA/MWICHIRINGIRI BLOCK 4/ 3260 (and any derives therein) including but not limited to NAIVASHA/MWICHIRINGIRI BLOCK 4/22298 which was shown and bequeathed to the Applicant during the deceased's lifetime.**
- xi) THAT this Honourable Court be pleased to appoint the Applicant as one of the administrators of the estate, jointly with three others to be named, to ensure transparency, accountability, and proper administration.**

xii) THAT this Honourable Court be pleased to make any other and further orders that it deems just.

xiii) THAT the costs of and occasioned by this application be borne by the Respondent.

Applicant's Case

15. The Application is premised on the annexed affidavit of **Githengi P. Mwangi** of even date wherein he deposes that since the demise of the deceased the family has never convened or agreed upon who was to be appointed as the administrators nor has there been consensus on the mode of distribution. He averred that he has never been consulted or consented to the issuance of any Grant of Letters of Administration, any Rectification or the distribution.
16. That some beneficiaries including himself have not received their rightful shares and the administrators have proceeded to transfer certain estate properties into their sole names and have either disposed or threatened to dispose of some of those properties, including parcels that had been specifically identified and allocated by the deceased to beneficiaries during his lifetime
17. That the affected properties is Title No. NAIVASHA/MWICHIRINGIRI BLOCK 4/22298 (hived off and/or formerly known as NAIVASHA/MWICHIRINGIRI BLOCK 4/3260), which has at all material times been occupied by him was given to him by the deceased.

18. He avers that he is facing imminent and unlawful eviction from the administrators and the Interested Party despite his long and continuous occupation since 1984. That the interested Party visited his home on 11th October, 2025 claiming to be the owner of the parcel of land allegedly acquired by way of purchase.
19. He argued that the property holds deep sentimental and ancestral value to him as his late wife and son were buried there therefore forms part of his rightful inheritance and stands to suffer great prejudice and irreparable loss should the same be distributed or transferred. That the Court should consider this as he stands to be rendered homeless

2nd Respondent's Case

20. The Application was opposed by way of Grounds of Opposition dated 19th February 2026 on the grounds that the application is res Judicata within the meaning of **Section 7** of the Civil Procedure Act; the issues raised herein having conclusively been determined by this Honorable Court. That the application is incompetent as it seeks to review and/or set aside the certificate of confirmation of grant whose validity has already been litigated and upheld.
21. That the purported joinder of interested party who purchased land parcel from the beneficiaries is unlawful and irregular as no formal application for joinder was made and allowed by the Court.
22. That the interests of innocent purchasers for value without notice are protected in law, and succession proceedings cannot be used to defeat registered proprietary interests long after distribution. That the

injunctive orders are sought against some of the properties that were lawfully sold and transferred to third parties, who have not been served, notified or given an opportunity to be heard, in violation of rules of natural justice.

23. That this Honorable court lacks Jurisdiction to issue injunctive orders affecting proprietary interests of non-parties particularly where no proper joinder or service has been effected.
24. That the application offends the principle of finality of litigation and undermines certainty of title, contrary to public policy

2nd Applicant's Supplementary Affidavit sworn on 28th January, 2026

25. The 2nd Applicant stated that as an administrator the 2nd Respondent assumed a statutory duty to ensure the complete and proper administration and distribution of the estate in accordance with the law.
26. Further that an administrator cannot arbitrarily dispose of estate property legal authority from the Court and the consent of the beneficiaries.
27. He contended that the argument to file for substitution is designed to delay proceedings and obstruct his lawful claim rather than address the merits of the case. He added that the Court has the inherent power to ensure justice is done and to prevent beneficiaries from being denied their lawful inheritance on the basis of procedural technicalities.

28. That the 2nd Respondent's claim that reopening the estate would prejudice third parties is speculative and unsupported by any evidence.

1st Applicant's Submissions in support of the Petition

29. The 1st Applicant submissions are dated 28th January, 2026 where through counsel he submits that despite being a dependant within the meaning of **Section 29** of the **Law of Succession Act**, he has never received his rightful share of the inheritance.
30. Reliance is placed in ***Rono v Rono & Another [2005] eKLR*** to submit that although it dealt with gender discrimination, the rationale is the same in that the Court will not hesitate to interfere with a distribution that is unjust or that excludes a rightful beneficiary
31. The Applicant further submitted that the 2nd Respondent is a co-administrator of the entire estate and cannot selectively absolve herself from responsibility for the portion of the estate belonging to the Applicant's house. That the estate is a single unit, and the duty to account for and distribute it to all beneficiaries is a joint and several responsibilities.
32. Counsel cited ***In re Estate of Kezia Njoki Gitau (Deceased) [2018] eKLR*** to submit that the succession process does not end with the issuance of a grant or even its confirmation. It ends when the beneficiaries are finally registered as the proprietors of their respective shares and have effective control.

33. The Respondents' failure to provide any evidence of lawful sales or proper accounting of the proceeds leaves their allegations as mere admissions of improper dealing with estate assets.
34. In submitting that inheritance is a recognized and protected property right under the constitution reliance was placed *In re Estate of Hemresiana Omolo Ochogo (Deceased)* [2024] eKLR. It is argued that to deny the Applicant his rightful inheritance through an incomplete and irregular succession process would be a direct violation of this constitutional guarantee.

The 2nd Applicant's Submissions in Support of the Summons

35. In the submissions dated 15th February, 2026 the 2nd Applicant submits that on the issue of res judicata, none of the previous proceedings addressed the claim for reasonable provision.
36. Reliance was made to the case of *In re Estate of Albert Musyoka Mueti (Deceased)* [2019] KEHC 5211 (KLR) to submit that this claim may be brought where a dependant was left out and emphasize that **Section 26** exists precisely to remedy situations where dependants have been unjustly excluded.
37. He argued that complete exclusion from the estate is manifestly unjust. That it would be unconscionable for a firstborn son who has lived on family land for four decades to be rendered landless while other beneficiaries enjoy the estate

38. On the issue of whether the alleged purchaser can defeat the Applicant's beneficial interest in the estate it is submitted that where administrators deal with estate property in a manner that excludes beneficiaries, the Court must intervene.
39. The 2nd Applicant submits that the Summons have met the threshold stipulated in **Giella vs Cassman Brown** for issuance of conservatory orders.
40. On the issue of costs the 2nd Applicant submitted that he is entitled to costs because he was forced to move to Court having been left out of the distribution of the estate and the conduct of the beneficiaries.

2nd Respondent's Submissions

41. The 2nd Respondent's written submissions in opposition to the Petition filed on 2nd October, 2025 are dated 14th October, 2025 and the submissions in opposition to the Summons dated 26th November, 2025 are dated 26th January, 2026.
42. The 2nd Respondent further submits that Petition and the Summons ought to be dismissed as they are an abuse of the Court process. Further that they are res judicata by virtue of **Section 7** of the **Civil Procedure Act** as they raise the same issues raised in the Application for Revocation of Grant dated 28th July, 2016, the Application for review and the Application dated 8th September, 2022 under the guise of review, reconfirmation and injunctive relief and provision for special provision.

43. It is argued that once an administrator dies, the only lawful mechanism is revocation or partial revocation of the grant to allow appointment of a replacement administrator. That the Applicants attempts to substitute the deceased through the present applications is illegal, incompetent and amounts to collateral attack on concluded proceedings. She argues that without substitution there is no legal representative before the Court to make or defend claims on behalf of the 1st house.
44. On the issue of reasonable provision, it is submitted that **Section 26** of the **Law of Succession Act** provides for beneficiaries who were left out of reasonable distribution and that the Applicants are among the members of the 1st house of the deceased and their names had been included. The law does not envisage perpetual re-litigation of settled estates.
45. The applicant merely listed **Simon Gitahi Kibirah** as interested party without filing a formal application for joinder or effecting service. This irregularity is fatal. Joinder is not automatic and cannot be achieved through mention in pleadings
46. The 2nd Respondent has accused the Applicants for delay and made reliance to *re estate of M'Mboroki M Rimberia [deceased] [2020] eKLR* and *In the Estate of G.KK (deceased) [2021] eKLR* to submit that the doctrine of inordinate delay bars stale claims. The Applicants claim arise more than a decade after the grant was confirmed and implemented.

47. It is further argued that the Applicants prayers are legally untenable as he seeks properties expressly allocated to the family of the 2nd respondent under the confirmed grant and subsequently sold to third parties.

Analysis and Determination

48. I have considered the pleadings and the arguments advanced by both parties. Before this Court can determine the Petition and the Summons, it is necessary to acknowledge that this file carries a history of re-litigation. In order to place the present issues in their proper context, a brief outline of the key developments leading to the current position is warranted.

49. The deceased herein died intestate on 23rd October, 1998. The Grant of letters of Administration were issued on to **Phyllis Muthoni Mwangi** from the 1st House and **Judy Muthoni Mwangi** from the 2nd House. The Grant was confirmed on 19th October 2010. From the record;

- a) Applicants filed an application for Revocation of Grant dated 28th July, 2016 citing fraud and failure to include all beneficiaries of the estate. On 10th January this Court dismissed the Application. The Summons were dismissed by A. K. Ndung'u in the ruling dated 10th January, 2018.
- b) The 1st Applicant then filed an Application dated 18th June, 2018 seeking review of the Ruling dated 10th January, 2018. The Application was dismissed by the Court on 27th February 2024.

- c) The 1st Applicant then filed the Application dated 8th September, 2022 and withdrew the same on 24th September, 2024 through his counsel on record Mr. Onani.
 - d) The Applicants filed Summons dated 8th September, 2022 seeking revocation, and cancellation of the Certificate of Confirmation of Grant dated 19th October, 2010 citing mismanagement and illegal transfer of estate property. The Respondents filed Preliminary Objection citing *res judicata*. This Court on 18th March, 2025 dismissed the Application and upheld the Preliminary Objection.
 - e) The 1st Applicant filed an application for revocation of grant dated 23rd September, 2024. On 28th March, 2025 the Court dismissed the Applicants Summons for Revocation of Grant dated 23rd September, 2024 for want of merit with costs being borne by the 1st Applicant.
50. Having stated the foregoing and order to put this matter to rest the Court identifies the following issues for determination:
- i) Whether the Petition and Summons are *res judicata* or otherwise an abuse of the Court process.
 - ii) Whether the Applicants have each established a case for reasonable provision under **Section 26** of the **Law of Succession Act**.
 - iii) Whether the 2nd Applicant is entitled to injunctive and preservative orders over the estate properties.
51. The doctrine of *res judicata* is a fundamental principle of law anchored under **Section 7** of the **Civil Procedure Act** which bars Courts from

re litigating matters that have been conclusively determined by a competent Court.

52. The Supreme Court, in the case of ***John Florence Maritime Services & Another v Cabinet Secretary Transport & Infrastructure & 3 Others*** [2021] KESC 39 (KLR) dealt with the issue of res judicata at length and stated;

[59] We restate the elements that must be proven before a court may arrive at the conclusion that a matter is res judicata. For res judicata to be invoked in a civil matter the following elements must be demonstrated:

- a) There is a former Judgment or order which was final;***
- b) The Judgment or order was on merit;***
- c) The Judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and***
- d) There must be between the first and the second action identical parties, subject matter and cause of action”***

(See Uhuru Highway Developers Limited v Central Bank of Kenya & others [1999] eKLR and See the decision of the Court of Appeal in Nicholas Njeru v Attorney General & Others Civil Appeal No 110 of 2011 (2013) eKLR)

53. Majanja J. in ***E.T v Attorney General & Another*** [2012] KEHC 5506 (KLR) provided a checklist of what must be established for res judicata to apply.

“[53] For the operation of the doctrine of res judicata first, the issue in the first suit must have been decided by a

competent court. Second, the matter in dispute in the former suit between the parties must be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar. Third, the parties in the former suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title (see the case of Karia and Another v The Attorney General and Others [2005] 1 EA 83, 89)."

54. The record demonstrates that the Applicants have persistently filed multiple applications since 2016, raising allegations of fraud, mismanagement of the estate, and illegal transfers among other. Each of these applications has been heard and dismissed by this Court. this is not the first time the Court is addressing the issue of *res judicata* in this Cause.
55. The present Petition and Summons substantially replicate those earlier claims. The Applicants seek to reopen, reconsider, and redistribute the estate by reviewing or varying or canceling or rectifying the Certificate of Confirmation of Grant. Allegations of forgery and unilateral dealings have been raised repeatedly and the Court has found that they have never been substantiated.
56. The Applicants have also consistently failed to meet the statutory threshold for revocation, annulment, or rectification of a grant as provided under **Sections 76 and 71** of the **Law of Succession Act**.
57. Of all the decisions delivered in this suit which involved substantially the same issue and the same parties. There have never been successful appeals or orders setting aside these decisions. It is

therefore an abuse of the Court process to continue wasting precious judicial time by raising the same issues repeatedly.

58. The doctrine of *res judicata* exists to protect the integrity of the judicial system, ensure finality of litigation and prevent parties from vexing one another with repetitive claims.
59. The Court comes to the inevitable conclusion is that **Prayers Nos. 7, 8, 9, 10 and 11** of the Summons are *res judicata* and amount to an abuse of the Court process.
60. On the issue of inadequate provision, **Section 26** of the **Law of Succession Act** empowers the Court, upon application by a dependant, to make reasonable provision out of the estate of a deceased person. It must be shown conclusively that such dependant has been left out or inadequately provided for.
61. It is not in dispute that the Applicants are children of the deceased from the 1st house. The record demonstrates both Applicants have been listed on the Petition for letters of Administration as beneficiaries. The Certificate of Confirmation of Grant of 19th October, 2010 was categorical the administrators were to hold the properties in trust for their respect houses in equal shares.
62. The Applicants have not demonstrated that they were denied their rightful share or that the administrators failed to hold the estate in trust for their house. Their claims are either largely premised on dissatisfaction with the distribution or a desire for more than what was allocated, rather than on actual exclusion from succession.

63. Even if the administrators had left the Applicants out, there is absolutely nothing on record to show that they were excluded or that the estate was distributed in a manner that left them with nothing, as alleged. The bare allegations advanced are not borne out by evidence.
64. Accordingly, the prayer for reasonable provision cannot stand. It collapses for want of evidentiary foundation and statutory basis.
65. The 2nd Applicant Applicants in **Prayers Numbers 3, 4, and 5** seeks injunctive relief restraining the Respondents and alleged purchasers from dealing with several parcels of land forming part of the estate, including **NAIVASHA/MWICHIRINGIRI BLOCK 4/3260 (and any derives therein) NAIVASHA/MWICHIRINGIRI BLOCK 4/22298, KARAGITA S.H. GROUP PLOT NO. 56, KARAGITA S.H GROUP PLOT NO. 396/31/57, SHARES WITH NYONJORO FARMERS GROUP, MALEWA SCHEME PLOT NO. 602**
66. The celebrated decision of *Giella vs. Cassman Brown & Co. Ltd [1973] EA 358* set out the principles guiding the grant of interlocutory injunctions. The same principles were reproduced in the Court of Appeal case of *Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] KECA 606 (KLR)*.
67. The pillars to be established by the 2nd Applicant are; a) to establish his case only at a *prima facie* level, demonstrate irreparable injury if a temporary injunction is not granted, and in case there are doubts the Court has to be convinced that the balance of convenience is in his favour.

68. The case of ***Mrao Ltd. V. First American Bank of Kenya Ltd & 2 others*** [2003] KECA 175 (KLR) defined what constitutes a *prima facie*. In this instant the 2nd Applicant must prove a recognizable legal right in the estate properties which has been infringed or is under imminent threat.
69. No evidence has been placed before this Court to demonstrate that the 2nd Applicant is facing imminent eviction or that the estate properties were not distributed in accordance with the confirmed grant.
70. Even if it were to be assumed that the administrators mismanaged the estate and sold portions to third parties, including the Interested Party, there is very little material presented to substantiate such allegations. Mere assertions without documentary proof or credible testimony cannot suffice to establish infringement of a legal right.
71. The Court finds that no *prima facie* case has been established. Consequently, once a party fails on the first limb and a *prima facie* case has not been established, the Court need not delve into the other tests of irreparable injury and balance of convenience. Failure to surmount the first hurdle is fatal to the application for injunctive reliefs.
72. This Court has carefully reviewed the long history of repeated applications filed by the Applicants all of which have been fully canvassed and determined to conclusions. The Court notes a dangerous pattern of abuse of the Court Process.

73. The Court is vested with inherent discretion under **Rule 73 of the Probate and Administration Rules** which explicitly saves the inherent powers of the Court to make orders necessary for the ends of justice or to prevent abuse of the process. This is reinforced under **Section 3A of the Civil Procedure Act** and **Article 159 of the Constitution**

74. In exercise of that discretion, this Court finds it necessary to bar the Applicants from filing further applications to avoid weaponizing litigation. Courts are not playgrounds for endless experimentation with pleadings. To permit perpetual reopening of succession proceedings is to squander scarce judicial time and to undermine the principle of finality

75. In the premise the Court makes the following orders

- a) **The Petition filed on 2nd October, 2025 and the Summons dated 26th November, 2026 are hereby dismissed in their entirety.**
- b) **Further filing of Applications in this cause is hereby barred without prior leave of Court.**
- c) **Any application filed without such leave shall be deemed incompetent and liable for dismissal.**
- d) **Costs of the Petition shall be borne by Joseph Mwangi Kamau and Costs of the Summons shall be borne by Githengi P. Mwangi.**

Delivered, Dated and Signed at Nakuru

On this 12th of March, 2026

Mohochi S. M

JUDGE