

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
SUCCESSION CAUSE NO. 2 OF 2023
(FORMERLY KIAMBU HC SUCCESSION CAUSE NO. 4 OF
2022) (CONSOLIDATED WITH NAIROBI HC SUCCESSION
CAUSE NO. 1247 OF 2015)
IN THE MATTER OF THE ESTATE OF GIKIMA NJOROGE
(DECEASED)

MARY WAITHERA GIKIMA.....1ST
OBJECTOR/APPLICANT
KENNETH NJOROGE GIKIMA.....2ND
OBJECTOR/APPLICANT

VERSUS

MICHAEL WARUI
GIKIMA.....PETITIONER/RESPONDENT

R U L I N G

Brief facts

1. It is important to note the two similar Summons for Revocation of grant of grant dated 20th May 2016 and 14th November 2024 are for determination herein. The first application was filed by Bosek and Company in Nairobi

High Court Succession Cause No.1247 of 2015. The second application dated 24th April 2013 was filed by P.

Wambugu Kariuki and Associates in Kiambu High Court Succession Cause No.4 of 2022. The files were consolidated for purpose of hearing the two applications whose subjects are two different grants but all dealing with the same property Thika L.R. No.4953/33/IX. The two files were consolidated for purpose of hearing the two applications referred to above.

2. The two applications are brought under the provisions of Section 76 (c) of the Law of Succession Act, Cap 160. Directions were issued to the effect that the two Summonses do proceed by way of viva voce evidence.

The Objectors' case

3. **PW1, Mary Waithera Gikima** relied on her witness statement dated 15th May 2024 and testified that she is a granddaughter of the deceased. She further testified that she has lived on land parcel number 4953/33/IX for about forty years, which land originally belonged to her grandfather and father Elias Gikima Njoroge jointly as well as one Gachuhi Kamenya and Kariuki Wairagu. PW1 further testified that after sometime, her late father bought off the other three owners and became the sole owner.
4. PW1 testified that her grandfather had three wives namely Esther Njeri Njoroge, Priscilla Wanjiru Njoroge and Miriam

Waithera Njoroge. She further testified that her grandmother was Miriam Waithira and her mother Jane Njeri who are both deceased. The witness further testified that there was an extended family meeting held on 11th August 1986 attended by her grandmother and mother, several uncles, aunties including the petitioner herein and the said meeting was witnessed by the then Assistant Chief. In the said meeting it was agreed that her mother, Jane Njeri was to be bequeathed with the suit property on behalf of her children.

5. PW1 testified that her mother successfully applied for letters of administration and the grant was confirmed on 11th August 1987 in Nakuru HC Succession Cause No. 114 of 1987. The witness further testified that the original title document was with KCB Bank at the time and the bank insisted that they could only release the title to whoever had been issued with the grant of letters of administration. The witness further stated that according to letter dated 22nd January 1979, addressed to the Bank Manager KCB Thika Branch, her grandfather had bought the suit property from the co-owners for Kshs. 100,000/-. PW1 testified that her grandmother and mother collected the original title from the bank which they still hold.

6. PW1 testified that Kariuki Wairagu and Gachuhi Kamenya, who co-owned the suit property with her grandfather lodged a suit against her grandmother vide Thika CM Succession Cause No. 1123 of 2000 and the court rendered its judgment on 3rd August 2009 directing that

Kariuki and Gachuhi transfer the suit property to her grandmother. The said co-owners appealed the decision before the High court but they later abandoned it. The witness testified that her grandmother bequeathed them with the suit property through a will and the High Court in Nairobi vide Succession Cause No. 1247 of 2015 confirmed the said will and confirmation of grant was

issued. The witness testified that the processes under which the petitioner obtained grant and sought to have the property in his name and later transferred it to a third party is clearly fraudulent and a criminal act.

7. On cross examination, PW1 testified that she was aware that another title was issued in reference to the suit property but she did not know who issued the second title. The witness further testified that the appeal against the Thika lower court judgment delivered on 3rd August 2009 abated. PW1 testified that in the title there were missing entries on the title from the two co-owners of her deceased grandfather. The witness further stated that she did not have any other proof of the transfer. PW1 further testified that the title deed was in KCB Bank as the deceased and his co-owners had taken a loan facility of Kshs. 28,000/- with KCB. The witness further testified that the petitioner sold the suit property and it was currently in the name of Legon Feeds International Limited since February 2015.

8. **PW2, Francis Waweru Muthumbi** testified that he is a retired Assistant Chief and knows the family of the deceased well for they came from his home location known as Kiarutara in Muranga County. The witness testified that the family of the deceased approached him as they wanted to share two properties Section 4 and Section 9 situated in Thika town. They stated that the house in Section 4 should go to David Njoroge while the one in Section 9 to Jane Njeri Elias. The family further stated that before handing over

the property to Jane Njeri they would collect rent from 30th November 1986 to 30th July 1988 and they signed the agreement in his presence. The witness testified that thirteen members were present in the said meeting including the petitioner.

9. **PW3, Simon Ndungu Gatimu** testified that the deceased is his father and the petitioner is his step brother. He testified that his immediate siblings are Elias Gikima Njoroge (deceased), Hellen Wanjiku Njoroge (deceased), Priscillah Njeri Njoroge (deceased), Naomi Wangui, Margaret Muthoni, James Muhia, Francis Ibwaga (deceased) and Samwel Gitau. The witness further testified that the petitioner herein Michael Warui Gikima alias Gatimu is the son of his step mother, the late Priscillah Njoroge of the 2nd household. PW3 testified that his father died on 29th January 1982 while his brother Elias Gikima Njoroge died on 20th January 1984.

10. The witness testified that the family in the year 1986 went to the Assistant Chief and agreed on how to share the two houses in Section 4 and 9. The house in Section 9 was to go to Elias Gikima while Section 4 was to go to the rest of the family.

11. PW3 testified that his mother Miriam drew up a will dated 20/6/2011 through her advocates where he was a witness together with Isaac Mungai Njoroge, Alice Njeri Wanjohi and Alice Kamau. The will bequeathed LR. No. 4953/33/IX to Kenneth Njoroge Gikima, Morris Ndungu Gikima, Mary Waithera Gikima and Judy Wanjiku Gikima. The witness testified that Michael Waweru, the

petitioner went against the will of his step mother and presented himself as the only administrator of their mother.

12. On cross examination, the witness testified that he had never seen the title in Miriam's name. PW3 further testified that the deceased had several pieces of land and he shared them out amongst his children.

13. **PW4, Margaret Muthoni Njoroge** testified that she is the daughter of the deceased and Miriam Waithira Njoroge. The witness further testified that Elias Gikima was her brother and he had married Jane Njeri. PW4 testified that she is aware that LR No. 4953/33/IX was initially bought by the deceased, Kariuki Wairage and Gachuhi Kamenya but her father bought them off and

became the sole owner of the property. The witness further testified that LR No. 4953/33/IX was given to the children of Elias because their father had bought it and that for a very long time the children of Elias have stayed on the suit property.

14. The witness testified that the petitioner, Michael Warui presented himself as the only administrator of their father's estate however her late mother Miriam Waithera Njoroge executed a will and gave her grandchildren the said property. Further, the witness testified that the deceased owned several parcels of land which he gave to his sons.

15. On cross examination, the witness testified that her mother paid the loan and recovered the title.

The Petitioners' Case.

16. **DW1, Peter Waiharo Gatimu**, relied on his witness statement dated 22nd July 2024 and testified that he is the son of the deceased and Priscillah Wanjiru Njoroge and brother to the petitioner Michael Warui. The witness testified that LR No. 4953/33/IX belonged to his father, Kariuki Wairagu and Gachuhi Kamenya. He further testified that during the lifetime of his father following his mother's death they held a family meeting whereby Elias

Gikima, Miriam Waithira, Kinuthia and Wairagu and Wainaiiana attended that the deceased said that the house was to go to the petitioner so that he could raise school fees. The witness further testified that the objectors are the plaintiffs in Thika High Court ELC Case No. 661 of 2017 and they are laying a claim over the suit property by way of adverse possession when he is contesting the agreement dated 14/8/1981.

17. On cross examination the witness testified that the family of Miriam Waithera stayed in Njoro but they moved and occupied the house of the deceased in section 9 Thika on LR. No. 4953/33/IX and the children of Miriam reside in the said house till date. The witness further testified that Elias was to hold the house in Section 9 for the benefit of the family. DW1 further testified that Michael Warui filed

a Succession Cause to inherit his father's property vide Case No. 26 of 2013 and he was given 1/3 of the estate.

18. **DW2, Michael Warui Gikima** relied on his statement dated 22nd July 2024 and testified that he is a son to the deceased and Priscillah Wanjiru Njoroge. He further testified that he petitioned for letters of administration to the estate of his father in Thika Magistrate Succession Cause No. 26 of 2013 which was granted and confirmed on 24/4/2013. DW2 testified that the deceased had three wives namely Esther Njeri Njoroge, Priscillah Wanjiru Njoroge and Miriam Waithira Njoroge. Esther Njeri Njoroge and the deceased had two

sons Kinuthia Gatimu who had the following children John Njoroge Gikima, Betheul Njuguna Gikima, James Chege Gikima, Francis Muhia, Elias Mwangi, Jane Wanjiru Gikima, Monica Wairimu Gikima and Lucy Ngonyo Gikima. Her other son was Elias Mwangi Njoroge who had the following children Patrick Njoroge Mwangi, John Karanja Mwangi, James Gikima Mwangi, Jesse Wanjohi Mwangi, Esther Njeri Mwangi, Dorcas Watiri Mwangi, Ruth Wanjiku Mwangi and Naomi Njambi Mwangi. The late Priscillah Wanjiru Njoroge and the deceased had the following children Pius Kariuki Gatimu, Peter Waiharo Gatimu, Francis Muhia Gatimu, Michael Warui Gikima and Emma Wangui. Miriam Waithira Njoroge and the deceased had the following children Elias Gikima Gatimu (deceased), Simon Ndungu Gatimu, James Muhia (deceased), Francis Igwanya (deceased), Samuel Gitau, Margaret Muthoni, Priallah Njeri, Naomi Wangui and Hellen Wanjiku.

19. On cross examination DW2 testified that there is an oral will by his father bequeathing him the suit premises. The witness further testified that Miriam was still alive in 2010 when he got the house and although she was collecting rent from the premises, he did not file any case against her. DW2 testified that he included his siblings in the succession cause but did not include any grandchildren. The witness further testified that the suit property belongs to Legon Feeds and it has never been owned by Miriam.

20. **DW3, Francis Muhia Gatimu** relied on the witness statement of his brother Peter Waiharu Gatimu, DW1.
21. On cross examination the witness testified that when his father died, his surviving wife Miriam went to live in the house in Section 9. Further the co-owners in the lower court case were ordered to give the suit premises to Miriam. The witness further testified that eh knows that DW2 was given a 1/3 share of the property by the deceased. DW3 testified that the children of Elias reside in the house at Section 9.
22. **DW4, John Njoroge Gikima** relied on the witness statement by Peter Waiharo DW1 and testified that the deceased is his grandfather and Apollo Gikima is his father.
23. **DW5, Esther Wambui Gachanya** relied on her witness statement dated 19/5/2025 and testified that she is the daughter of John Gachuhi Kamenya who died on 22/7/2024 and adopted his
statement. DW5 testified that her father was one of the owners in common in respect of LR. No. 4953/33/IX and that he did not recall selling the suit premises as alleged in the agreement dated 14/8/1981. The witness further testified that the said agreement was the basis of Civil Case No. 1123 of 2000 whose judgment was contested via Civil Appeal No. 578 of 2010 HC Nairobi. The witness testified that to date no decree in Thika CMCC No. 1123 of

2000 has ever been extracted or signed, sealed or issued by the court which is over 12 years.

24. On cross examination, the witness testified that she did not know the status of the appeal against the judgment of Thika CMCC No. 1123 of 2000. The witness further testified that she was aware that the children of Elias stayed in the house on the suit property.

25. Parties put in written submissions.

The Objectors' Submissions

26. The objectors rely on the cases of **Re Estate of M'Marete M'Ntingi [2004] eKLR** and **Re Estate of Kinyua Kinyariro [2017] eKLR** and submit that where beneficiaries unanimously agree on distribution, the court will not interfere unless fraud, coercion or mistake is shown. The objectors submit that the Assistant Chief testified that he positively identified the petitioner as having been present and confirmed that all eleven family members including the petitioner endorsed the allocation of the suit property to the house of Elias Gikima Njoroge. Further Jane Njeri was granted letters of

administration for the Estate of Elias on 11th August 1987 vide Nakuru High Court Succession Cause No. 114 of 1987.

27. Relying on the case of **Serah Njeri Mwobi vs John Kimani Njoroge [2013] eKLR**, the objectors submit that the petitioner approached the court in blatant contradiction of his own historical consent which conduct is barred by the equitable doctrine that one cannot approbate and reprobate. The objectors argue that the family agreement was subsequently formalized through a confirmed grant issued on 11th August 1987 in High Court Succession Cause No. 1 of 1987 vesting the property in the beneficiaries representing the estate of Elias Gikima Njoroge. Thus, once a property has been distributed to the beneficiaries under a confirmed grant, it ceases to form part of the estate of the deceased and no succession court may reopen it except through revocation of the grant. To support their contentions, the objectors rely on the case of **Re Estate of Gakunga Njoroge [2016] eKLR**.

28. The objectors argue that the petitioner never challenged the letters of administration that was issued to Miriam and further DW1 confirmed that the family agreed that Miriam, who was the only surviving widow, to be issued with the letter of administration. The objectors further submit that their claims is fortified by the civil proceedings in Thika CMCC No. 1123 of 2000 where the learned magistrate on 3rd August 2009 found in favour of Miriam who was the defendant in the said proceedings and declared her the lawful proprietor of the suit property ordering the plaintiffs, Kariuki

Wairagu and Gachuhi Kamenya to transfer their interest to her. The objectors further submit that the said case proceeds both succession cause and therefore by the time the succession causes were being filed, the property could only form part of Miriam Waithira's estate and no longer Njoroge Gikima's estate.

29. The objectors argue that the appeal filed to challenge ownership of the property vested in the Estate of Miriam Waithira was abandoned and never prosecuted. The appellants in the case Kariuki Wairagu and Gachuhi Kamenya were not challenging the succession cause lodged by Miriam being Thika Resident Magistrate Court No. 89 of 1984 but were challenging the fact that the learned magistrate had decided in favour of Miriam. Thus, by the time the two appellant's were lodging the case they were aware that Miriam had been issued with letters of administration.

30. The objectors refer to **Section 7 of the Civil Procedure Act** and argue that the court cannot revisit the issue of ownership as the same would be res judicata. To support their contentions, the objectors rely on the cases of **E.T vs Attorney General & Another [2012] eKLR**; **Accredo AG vs Steffano Uccelli & Another [2019] eKLR** and **In the Matter of the Estate of Thuku Gathu (Deceased) [2016] eKLR**.

31. The objectors submit that the petitioner's process of obtaining letters of administration in Thika Succession

Cause No. 26 of 2013 was fundamentally defective both procedurally and substantively

as he failed to obtain the mandatory introductory letter from the area chief which serves to identify beneficiaries, establish the death of the deceased and confirm persons with priority under the Act. The objectors refer the case of **Re Estate of M'Ngarithi M'Miriti [2017] eKLR** and submit that omission of the chief's letter renders a petition incurably defective and the petitioner confirmed on cross examination that he did not seek and obtain an introductory letter from the Area Chief. The objectors' further submit that the petitioner failed to obtain the requisite consents from persons with equal or superior right to petition. To support their contentions, the objectors refer to the decisions in **Re Estate of Njagi Njeru [2018] eKLR** and **Re Estate of Julius Ndubi Javan [2018] eKLR**.

32. The objectors' submit that the petitioner filed a fresh petition in 2013 despite the existence of a valid grant confirmed in Thika RM Succession Cause No. 89 of 1984 in favour of Miriam Waithira Njoroge. To support their contentions, the objectors rely on the cases of **Re Estate of Mwangi Wanduru [2015] eKLR** and **Re Estate of Kiamni Kinuthia [2013] eKLR** and submit that the petitioner never sought revocation of the grant in 1984 therefore his petition was a legal nullity from inception.

33. Relying on **Section 5 of the Law of Succession Act** and cases of **Re Estate of Gichuru Kariuki [2019] eKLR** and **Re Estate of Marri Njinu Kamau [2020] eKLR**, the objectors submit that Miriam acquired title to the suit property through litigation in 2009 and therefore possessed absolute proprietary rights at the time she

executed her will in 2011. Thus her will being subsequently confirmed in Succession Cause No. 1247 of 2015 enjoys judicial confirmation. The grant in their favour having satisfied the requirements of a grant of probate in Nairobi Succession Cause No. 1247 of 2015 is thus competent and ought to be upheld.

34. The objectors argue that the petitioner's conduct amounts to clear abuse of the court process and unlawful intermeddling under Section 45 of the Law of Succession Act as he caused fresh succession proceedings to be filed despite being aware of the 1987 confirmed grant, the 2009 civil judgment, the 2015 confirmation of Miriam's will and the family consensus upon the death of the deceased. The objectors further submit that the petitioner falsely claimed that the title was lost not knowing that at all times it was in their hands after being handed over by the bank. Their grandmother and mother through their advocates obtained the original title with KCB Bank Thika Branch and thus at no point did the petitioner, Kariuki Wairagu or Gachuhi Kamenya ever hold the title to warrant any of them to claim that it ever got lost.

35. The objectors further submit that the impropriety is further underscored by the petitioner's apparent ignorance or deliberate disregard of the existence of the original titles which had been properly released to them following the lawful discharge of charge. This further demonstrates the deceptive nature of his actions and his determined attempt to circumvent the rights of the rightful beneficiaries. Further, the copy of the title placed before the court

by the petitioner only reflects the entries made in his favour to the exclusion of the other beneficiaries and was thereafter swiftly transferred to a third party without their knowledge or consent. The objectors argue that the said entries appear to have been made under opaque and highly questionable circumstances given that the ownership of the property is still the subject of active litigation.

36. Relying on the cases of **Re Estate of Gitau [2016] eKLR and Re Estate of Thiong'o Ngatia [2019] eKLR**, the objectors submit that the petitioner has caused them grave prejudice as all the beneficiaries recognize them as the rightful heirs of the estate of Miriam Waithira Njoroge, a right flowing from their father's validly acquired interest from their grandfather, the deceased.

The Petitioner's Submissions

37. The petitioner submits that the objectors obtained the title of the suit land from KCB where it had been in safe custody by fraudulently misrepresenting facts that they had obtained letters of administration for the deceased's estate but it was the estate of Elias. The petitioners argue that the title had gotten lost and they therefore followed the correct legal channels to obtain another title.

38. The petitioner submits that there is no complaint from his immediate siblings as to how the grant was obtained. The petitioner submits that he did not know where the original title was but after due diligence he obtained a new title by following the due process. The petitioner relies on the case of **Charles Mbugua Muiruri vs**

Zipporah Njoki Muiruri (no citation given) and **Joseph Ndirangu Gitonga vs Magdaline W. Nyaga & 2 Others Succ. Cause No. 41 of 1996** and submit that the objectors have not satisfied the threshold to have the grant revoked.

39. The petitioner submits that he was not a party in Thika CMCC No. 1123 of 2000 and therefore the judgment is not binding upon him. Further, to date there has never been any decree extracted nor has any execution taken place. The petitioner submits that the said judgment has become unenforceable pursuant to Section 4(4) of the Limitation of Actions Act and therefore the objectors

cannot invoke the doctrine of *res judicata*. To support his contentions, the petitioner relies on the cases of **Peter Ngoge t/a O.P. Ngoge & Associates vs Eric Orina & Others** (no citation given) and **Fredrick Kiura Nyaga Waweru & 2 Others vs Justino Njue M'Mbuchi & Others Kerugoya ELC Case No. 114 of 2018**. Further, the petitioner submits that the objectors never registered themselves or Miriam as the owner of the suit property despite having the original title. The petitioner argues that they were unable to register themselves as the owners of the suit land as Miriam could not in law bequeath the said property as she was not the owner of the same.

40. The petitioner submits that he, Kariuki Wairagu and Gachuhi Kamenya are the rightful owners of the suit property. Further after the death of the deceased no one petitioned for letters of administration and no one complained that he petitioned for letters of administration. The petitioner refers to the case of **Mwamule**

Company Ltd vs Chief Land Registrar & Another ELC High Court at Malindi Case No. 105 of 2019 and submits that the objectors did not prove any fraud on his part.

The Law

Whether the objectors have presented sufficient evidence to warrant revocation or annulment of the grant

41. **Section 76 of the Law of Succession Act** gives the court the powers to revoke a grant provided the conditions stipulated therein have been met. It states that:-

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion:-

a) That the proceedings to obtain the grant were defective in substance;

b) That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

c) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

d) That the person to whom the grant was made has failed, after due notice and without reasonable cause either:-

i. To apply for confirmation of the grant within one year from the date thereof, or such

longer period as the court has ordered or allowed; or

ii. To proceed diligently with the administration of the estate; or

iii. To produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

iv. The grant has become useless and inoperative through subsequent circumstances.

42. The petitioner, Michael Warui Gikima applied for grant of letters of administration on 27th March 2013 vide Thika CM Succession Cause No. 26 of 2013. In his affidavit in support of letters of administration, he listed himself and Francis Muhia Gatimu as the only beneficiaries and survivors of the deceased. He further listed part of LR No. 7529 as the only asset for distribution. He annexed a letter from the Chief dated 6th November 2012 listing him and Francis Muhia as the only survivors of the deceased. Further, attached to the petition of grant of letters of administration, was the

consent to the making of a grant of administration which has been signed by Francis Muhia only.

43. It is evident that the petitioner concealed material facts from the court as he failed to include in the proceedings the three households of the deceased. The petitioner only listed his own brothers as the only surviving child of the deceased other than himself. The letter by the chief was also skewed in that it concealed the material facts regarding the number and particulars of the beneficiaries. Under Section 76, it is evident that the petitioner fraudulently obtained the said grant as he excluded all the other beneficiaries from three households and he failed to obtain any of their consents. The petitioner failed to obtain the consents of the said beneficiaries as required by the law.

44. That notwithstanding, the surviving widow of the deceased lived in the said property with several grandchildren. The petitioner cannot pretend not to have been aware of this fact. He admitted that it was the surviving widow who paid his fees from the rent from the said property. The deceased's wife Miriam Waithera is said to have repaid the loan on the property in full and obtained the discharge of charge from the bank. As the administratrix of the deceased's estate the trial court in Thika CM Civil Suit No.1123 of 2000 had given the property to the widow. Further, there exists undisputed

evidence that the plaintiffs lodged an appeal in the High Court Nairobi vide Civil Appeal No. 578 of 2010 on 17th December 2010 but the appeal abated. Additionally, the petitioner included only Francis Muhia, DW3 in his petition yet Francis testified on cross examination that he was aware that his step mother, Miriam, the only surviving widow at the time went to court regarding the suit

property. It is evident that the petitioner's conduct was fraudulent when he was obtaining the grant. Thus, in light of the above, it is my considered opinion that the objectors have demonstrated reasons to warrant the revocation of the grant. It therefore follows that the grant issued to the petitioner on 27th March 2013 and confirmed on 24th April 2013 is hereby revoked.

45. The objectors have further argued that LR. No. 4953/33/IX does not form part of the estate of the deceased as that issue was already decided on by the lower court in Thika. From the record and as discussed the issue of ownership of LR. No. 4953/33/IX was already determined by a court of law in Thika CMCC No. 1123 of 2000 where the learned magistrate declared that the property belonged to Miriam Waithera Njoroge and directed that Kariuki Wairagu and Gachuhi Kamenya transfer their portions to her. However, the judgment was issued on 3rd August 2009 has no legal force. As such, the issue of whether the property in issue is an asset in this cause is one to be decided after hearing the parties in a succession case. It is not a subject to be determined in

this application for revocation of grant. Evidence from the parties is that the judgment in CM Thika Civil case No.1123 of 2000 was never executed by the plaintiff Miriam Waithera Njoroge. Under the Limitation of Actions Act (Cap 22), an action for execution of judgment must be initiated within twelve (12) years from the date of the decree, failure to which it becomes unenforceable. The judgment in Thika Civil Case No.1123 of 2000 was delivered on 03/04/2009. By the time this case was being heard, the said

judgment had become unenforceable and cannot be relied on by any of the parties. It is not in dispute that the Civil Appeal No.578 of 2010 abated under Rule 24(3) (2) of the Civil Procedure Act following the death of parties and failure of substitution.

46. I have looked at the proceedings in Succession Cause No.26 of 2013 where the petitioner herein was appointed administrator and eventually obtained a certificate of confirmation in respect of 1/3 share of the property because their father had given the petitioner the said share for the rent therein to raise fees for the petitioner through Miriam Waithera since the petitioner was the last born in his mother's house and was still in school.

47. It is on record that the deceased had three wives namely Esther Njeri Njoroge, Priscilla Wanjiru Njoroge and Miriam Waithera Njoroge who had several children with the deceased as named herein. There were several grand

children especially in the first house. Rule 26 of the Probate and Administration Rules requires that every person entitled to the estate of the deceased in the same degree as or in priority to the applicant be served with notice of petition of letters of administration. The petitioner in this cause failed to comply with Rule 26 in regard to his brothers who were entitled to the estate of the deceased in the same degree. The petitioner had siblings who had passed on and whose children including the objectors herein ought to have been served with the petition but were not served. It did not matter that the deceased may have expressed his wish in order to give gifts to beneficiaries during his lifetime. Section 26 is a compulsory requirement of the law on service and must be

complied with. Part of the property in issue in this matter was the only asset for distribution in the estate and it was imperative that the other lawful beneficiaries be informed.

48. The petitioner was issued with letters of administration on 27/03/2013. Letters of grant of administration was issued to the petitioner on 27th March 2013 and the petitioner on 24th April applied to have the grant confirmed before the expiry of six months. The petitioner listed 1/3 share of LR 7529 as the asset to be distributed to himself in his supporting affidavit. The court confirmed the grant and issued a certificate of confirmation of grant on 24th April 2013.

49. The objectors filed HC Succession Cause No. 1247 of 2015 Nairobi In the Matter of the Estate of Miriam Waithera Njoroge and the court issued letters of grant of administration to Kenneth Njoroge Gikima, Mary Waithera Gikima and Judy Wanjiku Gikima on 3rd May 2021 and confirmed on 7th May 2021. On further perusal of the record, the assets distributed included LR. No. 4953/33/IX Section 9 Thika Municipality and LR. No. Loc 16/Kiarutara/891 which the objector argues belongs to the late Miriam Waithera based on the judgment of Thika CM Civil Case No.1123 of 2000.

50. In regard to the grant confirmed in Nairobi HC Succession Cause No.1247 of 2015, it is important that succession issues and the will of Miriam Waithera Gikima be interrogated by the Succession court during the hearing of the parties. This is based on the fact that it is

not in dispute that the property in issue L.R. 4953/33/IX was not in Miriam Waithera's name at the time she made the will to bequeath the property to the objectors.

51. In regard to the judgment herein which has become unenforceable due to lapse of time and the fact that there exists two grants confirmed by different courts in two different succession cases and estates, as well as the need to have the parties herein be heard for purpose of determination of the issues in regard to succession in both estates, I hereby make the following orders:-

- a) That the grant in Kiambu High Court Succession Cause No.4 of 2022 (now Thika Succession Cause No.2 of 2023) and the grant in Nairobi High Court Succession Cause No.124 of 2015 are hereby revoked.
- b) That any title deeds/leases resulting from the said revoked grants are hereby revoked and ordered cancelled forthwith.
- c) That these consolidated Succession Causes be fixed for hearing with a view of resolving the issues arising from the two estates of David Njoroge Gikima and Miriam Waithera Njoroge.
- d) That in view of this ruling, the parties to decide on the way forward in Thika ELC Case No.661 of 2017.

52. This being a family matter, each party will meet their own costs of these applications.

53. It is hereby so ordered.

***RULING DELIVERED VIRTUALLY, DATED AND SIGNED
AT THIKA THIS 19TH DAY OF MARCH 2026.***

F. MUCHEMI

JUDGE