

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
FAMILY APPEAL NUMBER **E019** OF 2024
IN THE MATTER OF THE ESTATE OF GLADYS NJOKI KIMUHU
(DECEASED)

MARTIN MWENDA NJOROGE.....APPELLANT

VERSUS

BENSON NJOROGE KIMUHU.....1ST RESPONDENT
STEPHEN WANYOIKE KIMUHU.....2ND RESPONDENT
FRANCIS NGIGI KIMUYU.....3RD RESPONDENT

(An appeal from ruling and orders in the Senior Principal Magistrates Court at Ruiru (Hon. C.K. Kisiangani PM) dated 6-06-2024 in her succession case number E004 of 2022)

JUDGMENT

Gladys Njoki Kimuhu (hereinafter referred to as ‘the deceased’) died on 30-06-2017. Among the properties she is said to have owned was land parcel known as Ruiru East/Juja East Block 2/1037 (hereinafter referred to as ‘the original property’). It is common ground that before the deceased passed on, she had subdivided the original property into twenty four parcels which were registered as Ruiru East/Juja East Block 2/32049 to Ruiru East/Juja East Block 2/32072 (hereinafter referred to as ‘the latter parcels’). This is evidenced by green card of the original property which shows that the register for it was closed on 11-05-2017 upon subdivision.

In the lower court cause, the appellant and the 3rd respondent were appointed as administrators of the estate of the deceased vide grant issued on 30-05-2022. I

take it that this grant is still in force and operative as I have not been shown evidence and it has not been suggested that it was challenged or revoked. After issuance of the grant, the appellant brought a chamber summons application dated 14th November 2023 praying for the following orders;

1. The Land Registrar Ruiru be ordered to cancel all acts of doings or transactions effected on the latter parcels.
2. The Honourable court do issue an order cancelling the transfer of the latter parcels and the title deeds issued on 28th day September 2017 to Stephen Wanyoike Kimuhu, Benson Njoroge Kimuhu and Francis Ngigi Kimuhu and further order that the register be rectified by reinstating the name of the deceased Gladys Njoki Kimuhu as the registered proprietor.
3. The latter parcels be included in the list of assets of the deceased Gladys Njoki Kimuhu pending distribution.
4. The Land Registrar Ruiru be ordered to avail to the court all documents that facilitated the transfer of each of the latter parcels as follows;
 - a. Certified copies of all green cards arising out of subdivision of Ruiru East/Juja East Blk 2/1037;
 - b. Certified copies of the consent by the Land Control Board.
 - c. Certified copies of the transfer documents for the above plots.
 - d. Certified copies of the green cards.
 - e. Certified copies of the stamp duty receipts.
5. Kenya Commercial Bank, through its Ruiru Branch Manager be hereby ordered to furnish the court with statement of account from inception to date for account number 1204244367 operated by the deceased Gladys Njoki Kimuhu before her demise.

6. The costs of this application be provided for in the cause.

The main grounds of the above application were that the transfers of the latter parcels amounted to intermeddling with the estate as the transfers were done on 28-09-2017 after the deceased had passed on and before the grant was confirmed. In opposing the application, the respondents did not file any replying affidavit or explain the circumstances of the transfers but opted to file grounds of opposition dated 14th December 2023.

The respondents' grounds of opposition pleaded that the appellant's appointment as an administrator was done through fraud, the appellant was not a beneficiary of the estate and the deceased had already subdivided and distributed the original property amongst the beneficiaries of the estate before her demise, the appellant's father being one of them. Attached to the grounds of opposition were minutes dated 17-07-2016 in which the deceased was shown to have distributed her properties, minutes dated 17-09-2013 which discussed sale of a property in Kihunguro, minutes dated 22-09-2013 in which there were discussions about a plot in Juja farm and a letter to the appellant from the respondents and others dated 4-12-2023.

After hearing the application by way of written submissions, the trial court disallowed vide the ruling which is the subject of this appeal. From my reading of the said ruling, I discern that the reasons for disallowing the application were;

- a. The process of sub-divisions was started by the deceased.
- b. The original property was not free property of the estate of the deceased as it was not listed in the affidavit in support of the petition.
- c. The beneficiaries of the deceased's estate had no objection to the transfers; and

- d. There were no reasons given for ordering the bank to furnish the statement of account.

Being dissatisfied with the above ruling, the appellant has brought this appeal raising the following grounds;

1. *The learned Magistrate erred in law in finding no merit in the summons dated 14th November 2023.*
2. *The learned Magistrate erred in law and fact by finding that the respondents herein who transferred twenty four parcels of land registered in the deceased's name to themselves after her death have not intermeddled with the deceased's free property.*
3. *The learned Magistrate erred in law by failing to appreciate that when land is sub-divided, the new parcel registers still belong to the registered owner until they are transferred to third parties and therefore subdivision does not amount to transfer of the land.*
4. *The learned Magistrate erred in law by exercising her discretion in an injudicious manner by failing to cancel titles to land obtained by the respondents fraudulently from deceased estate and failing to reinstate the intermeddled property back to the deceased estate.*
5. *The learned Magistrate erred in law and fact by denying all the appellant's prayers which would enable the proper administration of the estate of the deceased.*
6. *The learned Magistrate erred in law and fact by relying on the false, unethical and unprofessional submissions by the counsel for the*

respondents that he represents all beneficiaries in the estate of the deceased.

7. The learned Magistrate erred in law and fact by failing to evaluate the totality of all of the appellant's evidence on record and disregarding well established law on land registration and the law of succession.

8. The learned Magistrate's decision albeit, a discretionary one was plainly erroneous and wrong.

I have read the submissions of the appellant dated 30th June 2025 and those of the respondents dated 2nd July 2025. From the submissions and the record of appeal, I gather that the issues for determination herein are whether the transfers of the latter parcels to the respondents amounted to intermeddling with the estate and whether the said properties are proper and free assets of the estate which should be available for distribution in the cause.

Intermeddling in an estate has been subject of definition in various court proceedings. Intermeddling refers to the state of interfering with other people's affairs in a manner that is unwelcome or unwanted especially in matters that are not in one's concern. In the context of the law of succession, it refers to any act that results to dealing with property of an estate in a manner that is not consistent with or authorized by the law. This may in my view include disposing, using or interfering with the legal status of the property belonging to the estate without any authority or right to do so. Honourable Justice W.M. Musyoka held in ***In the Matter of the Estate of Veronica Njoki Wakagoto (Deceased) [2013] KEHC 1930 (KLR)***, that;

'The law on intermeddling is section 45 of the Law of Succession Act, which states –

‘(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall

—

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or both fine and imprisonment ...’

The effect of this is that the property of a dead person cannot be lawfully dealt with by anybody unless such person is authorized to do so by the law. Such authority emanates from a grant of representation, and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.’

It is the position in law that, the moment a person passes on, any process touching on their property that would amount to change of proprietorship must have the approval of the court through a person duly issued with a probate or grant of letters of administration. Even in matters where a deceased person had left a will or their wishes can otherwise be established, the executor of the will or the person in charge of the estate must obtain the court’s confirmation and approval of any action that may lead to disposition of the rights to the property.

It is not disputed that the deceased in this matter had subdivided the original property before she died. The Honourable Magistrate was right in observing that when the deceased did the subdivision, she was in a good state of mind as there was no evidence to the contrary. What is not disclosed is whether the deceased

had expressed her intention of the subdivision. The court cannot assume that she was carrying out the subdivision for purposes of transferring the resultant parcels to the respondents or the persons who eventually got the titles in their names three months after she passed on.

The minutes which were attached to the grounds of opposition did not specifically mention the land in question. These minutes which were made a year before the deceased passed on were not produced in court in the proper manner. They were not exhibited to any affidavit and were not in my view part of evidence in the cause. The grounds of opposition to which the minutes were attached were signed by the advocate for the respondent and it was improper for the court to rely on the same in ascertaining the wishes of the deceased.

Even if I were to assume that the minutes were properly produced and could form part of the court record, I find their contents insufficient to justify the transfers. All that I see in the minutes is that the Makuyu land belonged to one Kamande and his mother, Juja farm to Ngugi, Njoroge and Wanyoike and a plot on Kenyatta road to Wangari. Even assuming that these parcels are the same as the one subject of the application and that these were the wishes of the deceased, the transfer of the parcels could not in law be done the way the respondents did. Where there is a Will, the executor or the holder of the probate should approach the court and have the grant confirmed. It is a certificate of confirmation of grant that enables the executor or the administrator to distribute the estate according to the wishes of the deceased or the process of the law.

The respondents did not file any affidavit to explain how the title deeds ended in their name without the grant having been confirmed. It is a mystery that the Land Registrar processed the title deeds without a certificate of confirmation of grant and one should be justified to wonder who indeed signed the transfer

forms. In this regard, I do not hesitate to hold that the transfers were irregular and against the law and as such they were null and void.

The court seized of a succession matter has a duty to do an inquiry into the process of distribution of the estate. An estate of a deceased person is always under the control and supervision of the court and anything done without approval of the court cannot be allowed to stand. Honourable Justice Munyao Sila (as he then was) while dealing with an issue of irregular subdivision and transfer of land belonging to an estate of a deceased person in ***Paulina Chemutai Chirchir v Kipyegon Arap Sang & 3 others [2015] KEHC 4303 (KLR)*** held that;

‘The sub-division and subsequent transfer of two of the resultant parcels to the 3rd and 4th respondents was contrary to the provisions of Section 45 of the Law of Succession Act, which provides as follows: -

Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

The above provision of the law further provides for a criminal sanction for any person who contravenes it. I know of no law which permits what the respondents did in this case and none has been shown to me. The sub-division and subsequent transfer of the parcel No. 822 was illegal. This court cannot condone an illegality to stand. Indeed, under Section 26 of the Land Registration Act, Act No. 3 of 2012, any title procured illegally is liable to be cancelled.’

The respondents have argued that the appellant not being beneficiary of the estate had no locus to bring the application. This argument has no basis in law. The appellant was an administrator of the deceased's estate and had not only the locus but also a duty to protect, preserve and collect the estate and this includes approaching the court for orders as ones prayed for. It is the grant of the letters of administration that gives one a right to bring actions in respect of the estate and not their status in the estate. The appellant has not claimed to be a beneficiary of the estate and in my view, in bringing the application, he was performing his duties and obligations given to him by the court when the grant was issued. In ***Re Estate of Saulo Wakalikha Masoni (Deceased) [2014] KEHC 768 (KLR)***, it was held that;

'It is a grant of letters of administration that gives a person the mandate to deal with the property of a deceased person. This is made clear by section 82(a) of the Law of Succession Act which lists the powers of a personal representative to include –

“to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arise out of his death for his estate.”’

The respondents argued that the appellant had obtained the grant through fraud. This is a statement that was not backed by any evidence. If indeed the grant had been obtained through fraud, the respondents should have applied to have the same revoked. Until a grant is revoked, it remains valid and the acts of the administrator cannot be impeached without a proper application being made.

The court had a duty to make sure that the grant it had issued was being used for the intended and legal purposes. A grant is an instrument that belongs to the court and which the court can recall in the event it is demonstrated that it was being abused or misused. The court had a duty to call for all documents,

evidence and processes that may have been used to commit fraud. However, since I have stated that there was no clarity on how the transfers were done, I cannot say that the grant was used to make the transfers. Further, having found that any process leading to the new title deeds and the registration of the respondents as proprietors were null and void, I see no need for ordering production of the documents as prayed for in prayer 4 of the application dated 14th November 2023.

The prayer for statement of account was not properly framed. The appellant did not provide evidence of the existence and ownership details of the account and the court is not expected to issue orders which may not be capable of being complied with. The appellant may make an application once such details are available at the time of confirmation. That widow shall remain open.

In view of what I have stated above, I allow this appeal, set aside the trial court's ruling and substitute it for the following orders;

1. The Land Registrar Ruiru is hereby ordered to cancel all acts, processes, entries or transactions effected in land parcels numbers Ruiru East/Juja East Block 2/32049, Ruiru East/Juja East Block 2/32050, Ruiru East/Juja East Block 2/32051, Ruiru East/Juja East Block 2/32052, Ruiru East/Juja East Block 2/32053, Ruiru East/Juja East Block 2/32054, Ruiru East/Juja East Block 2/32055, Ruiru East/Juja East Block 2/32056, Ruiru East/Juja East Block 2/32057, Ruiru East/Juja East Block 2/32058, Ruiru East/Juja East Block 2/32059, Ruiru East/Juja East Block 2/32060, Ruiru East/Juja East Block 2/32061, Ruiru East/Juja East Block 2/32062, Ruiru East/Juja East Block 2/32062, Ruiru East/Juja East Block 2/32064, Ruiru East/Juja East Block 2/32065, Ruiru East/Juja East Block 2/32066 and Ruiru East/Juja East Block 2/32067, Ruiru East/Juja East Block 2/32068, Ruiru

East/Juja East Block 2/32069, Ruiru East/Juja East Block 2/32070, Ruiru East/Juja East Block 2/32071 and Ruiru East/Juja East Block 2/32072.

2. The Land Registrar Ruiru is hereby ordered to reinstate and revert proprietorship of land parcels numbers Ruiru East/Juja East Block 2/32049, Ruiru East/Juja East Block 2/32050, Ruiru East/Juja East Block 2/32051, Ruiru East/Juja East Block 2/32052, Ruiru East/Juja East Block 2/32053, Ruiru East/Juja East Block 2/32054, Ruiru East/Juja East Block 2/32055, Ruiru East/Juja East Block 2/32056, Ruiru East/Juja East Block 2/32057, Ruiru East/Juja East Block 2/32058, Ruiru East/Juja East Block 2/32059, Ruiru East/Juja East Block 2/32060, Ruiru East/Juja East Block 2/32061, Ruiru East/Juja East Block 2/32062, Ruiru East/Juja East Block 2/32062, Ruiru East/Juja East Block 2/32064, Ruiru East/Juja East Block 2/32065, Ruiru East/Juja East Block 2/32066 and Ruiru East/Juja East Block 2/32067, Ruiru East/Juja East Block 2/32068, Ruiru East/Juja East Block 2/32069, Ruiru East/Juja East Block 2/32070, Ruiru East/Juja East Block 2/32071 and Ruiru East/Juja East Block 2/32072 to the estate of Gladys Njoki Kimuhu.

3. Land parcels numbers Ruiru East/Juja East Block 2/32049, Ruiru East/Juja East Block 2/32050, Ruiru East/Juja East Block 2/32051, Ruiru East/Juja East Block 2/32052, Ruiru East/Juja East Block 2/32053, Ruiru East/Juja East Block 2/32054, Ruiru East/Juja East Block 2/32055, Ruiru East/Juja East Block 2/32056, Ruiru East/Juja East Block 2/32057, Ruiru East/Juja East Block 2/32058, Ruiru East/Juja East Block 2/32059, Ruiru East/Juja East Block 2/32060, Ruiru East/Juja East Block 2/32061, Ruiru East/Juja East Block 2/32062, Ruiru East/Juja East Block 2/32062, Ruiru East/Juja East Block 2/32064, Ruiru East/Juja East Block 2/32065, Ruiru East/Juja East Block 2/32066 and Ruiru East/Juja East Block 2/32067,

Ruiru East/Juja East Block 2/32068, Ruiru East/Juja East Block 2/32069, Ruiru East/Juja East Block 2/32070, Ruiru East/Juja East Block 2/32071 and Ruiru East/Juja East Block 2/32072 shall form part of the estate of the deceased in the Ruiru Senior Principal Magistrate's Court succession cause number E004 of 2022 with the beneficiaries of the said estate at liberty to distribute them in accordance with law putting into consideration any proved wishes of the deceased.

4. This being a family matter, I make no orders as to costs.

Dated signed and delivered at Nairobi this 25th day of **March** 2026.

B.M. MUSYOKI
JUDGE OF THE HIGH COURT.

Judgment delivered in absence of the parties.