



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYANDARUA**

**PROBATE & ADMINISTRATION NO. E030 OF 2025**

**IN THE MATTER OF THE ESTATE OF:**

**MILCAH MUGURE GITAU alias MILKA MUGURE D.  
KIERU..... DECEASED**

**BETWEEN**

**SALOME WANJIKU MUGURE MWANGI.....1<sup>ST</sup> OBJECTOR/APPLICANT**

**NELSON MAINA GITAU ..... 2<sup>ND</sup> OBJECTOR/APPLICANT**

**AND**

**GEORGE GITAU MUITITHIA.....1<sup>ST</sup> PETITIONER/RESPONDENT**

**HANNAH WACHUKA GITAU.....2<sup>ND</sup> PETITIONER/RESPONDENT**

**RULING**

1. Salome Wanjiku Mugure Mwangi and Nelson Maina Gitau, the applicants herein, moved the court through a Summons dated 2<sup>nd</sup> day of October 2025 under sections 35,38 & 45 of the Law of Succession Act. They are seeking the following orders:

- a) The application herein be certified urgent and service hereof be dispensed with in the first instance to enable the application be heard and directions given in the first instance. [Spent]
- b) This honourable court be pleased to strike out the petition presented herein by the petitioners/respondents to this court on 26<sup>th</sup> May 2025 in respect to the estate of the late Milcah Mugure, also known as Milka Mugure D. Kieru, deceased, for being fraudulent and untenable.
- c) This honourable court be pleased to stay further proceedings herein and specifically the gazettelement of the petition herein pending the hearing and determination of this application.
- d) This honourable court issues a conservatory order to preserve the estate of the deceased herein by restraining the petitioners/ respondents, their agents or servants from selling, charging, transferring, leasing entering into or otherwise dealing or

interfering with any property belonging to the estate of the late Milcah Mugure also known as Milka Mugure D. Kieru, deceased, pending the hearing and termination of this application.

e) Costs of this application be provided for.

2. The application is premised on the following grounds:

a) The petition herein has been filed with fraudulent intention by concealment of facts material to the succession, namely, that the 1<sup>st</sup> petitioner was divorced from the deceased for more than forty years before her demise, and that objectors herein, together with their siblings, are the children and potential beneficiaries of the deceased, Milka Mugure Kieru.

b) The objectors/applicants and their siblings were fraudulently omitted from the proceedings and were left without a provision despite being the proper and lawful beneficiaries of their mother's estate.

c) The 1<sup>st</sup> petitioner and the deceased had a court case, that is Nakuru High Court civil suit No. 50 of 1980 (O.S.), wherein the matrimonial property of the deceased and the 1<sup>st</sup> petitioner was partitioned, and the 1<sup>st</sup> petitioner and his wife, the 2<sup>nd</sup> petitioner, have no right or claim over the property of the deceased.

d) Despite an objection being filed, the petitioners have proceeded to apply for gazettelement.

e) Unless orders are issued staying further proceedings, the petitioners are likely to obtain a grant with which to intermeddle with the properties of the estate.

f) The properties of the estate are at risk of being intermeddled with and wasted by the petitioners. There is imminent danger of the petitioners alienating, wasting or otherwise dealing with the estate assets to the detriment of the objectors and their siblings unless orders are granted to protect the assets pending hearing of this application.

g) Unless this court intervenes, the objectors, applicants and their siblings will suffer irreparable harm.

h) It is in the interest of justice that this application be heard on a priority basis and the orders sought be granted.

3. The petitioners filed grounds of opposition as follows:

a) The application is frivolous, Vexatious, scandalous and an abuse of the process of this honourable court.

b) The orders sought in the said application are incapable of being granted.

c) The application is brought under the wrong sections of the law.

- d) The Objectors/Applicants should have commenced proceedings in accordance with the applicable provisions or the Law of Succession Act (Cap 160) Laws of Kenya.
4. The objectors/applicants attached documents that show that the deceased and the 1<sup>st</sup> petitioner/ respondent were divorced, and a certificate of decree absolute dated 18<sup>th</sup> January 1980 was issued. Subsequently, the deceased and the 1st petitioner/respondent entered into a consent in Nakuru Civil Suit No. 50 of 1980 (OS) dividing the matrimonial property.
  5. Based on this legal stance, the petitioners/respondents lacked any grounds to initiate the succession case here. They are strangers to the estate of the deceased, herein.
  6. The respondents have argued that the application relies on incorrect sections of the law. While sections 35 and 45 are not applicable, citing the wrong section does not necessarily undermine their claim. In my opinion, even without legal citations, the facts they presented clearly indicate that the respondents were unlawfully attempting to acquire the deceased's property. Article 159(2)(d) of the Constitution of Kenya states:  

**(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—**  
**(d) justice shall be administered without undue regard to procedural technicalities;**
  7. This is, therefore, an apt case to invoke Article 159(2)(d) of the Constitution of Kenya. The application is allowed with costs.

**Delivered and signed at Nyandarua, this 14<sup>th</sup> day of April 2026**

**KIARIE WAWERU KIARIE**

**JUDGE**