

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION APPEAL NO. E001 OF 2025

IN THE MATTER OF THE ESTATE OF KIONGA s/o MURIITHI
alias KIUNGA MURIITHI (DECEASED)

JAMES MURIITHI KARANJA..... 1ST
APPELLANT

ALEXANDER MWANGI KARANJA..... 2ND
APPELLANT

VERSUS

BENARD KIONGA GICHINI..... 1ST
RESPONDENT

CHRISTOPHER MUCHOKI KIBUI..... 2ND
RESPONDENT

JUDGMENT

1. This is an appeal from the Judgment of Hon. E. Kanyiri (Principal Magistrate) dated 20.12.2024 in Karatina PMCSUCC Cause No.E052 of 2020. The appellants were the petitioners in the lower court. The petitioners filed the succession cause, claiming to be the deceased's stepsons. In the petition, the appellants declared that the deceased left 4 beneficiaries, as per the Ruguru chief's letter, that is:
- i. James Muriithi Karanja step son
 - ii. Alexander Mwangi Karanja..... step son

- iii. Mwangi Kionga..... Son
- iv. Grace Njoki Mwangi..... Daughter

2. The deceased died peacefully on 5.5.1976 at a ripe old age of 85 years. They also declared that the estate has one asset, that is, Ruguru/Kiamariga/704. The appellants were granted letters of administration on 7.07.2020 and on 4.05.2021, they sought confirmation of the grant, where the shares were to go to the appellants only.

3. The Respondents filed an application for joinder as protestors, where they stated that there is another succession cause being Succession Cause Number 83 of 2014. It was averred that the first applicant was the petitioner and the second applicant is a creditor to the estate.

4. It was averred that Benard Kinga Gichini sold land to Christopher Muchoki Kibui in 2016. The first applicant was then a registered owner. The appellants filed succession cause number 6 of 2017, in which the grant issued in succession cause number 83 of 2014 was revoked. The decision is reported as *In re Estate of Kionga s/o Muriithi alias Kiunga Muriithi (Deceased) [2019] KEHC 7389 (KLR)*, where the court stated as follows:

The applicants are not busy bodies. Unlike in *Mary Nanjala Muhalya -Vs- Ambrose Kipruto (2014) eKLR* the authority cited for the petitioner respondent, they were not filing a suit on behalf

of the deceased but seeking the revocation of the grant as interested parties as provided for under s. 76 of the Laws of Succession Act.

On the 2nd issue, see s. 66 Laws of Succession Act on priority: although as a grandson the 1st respondent could inherit the grandfather's Estate from his father or if his grandfather bequeathed him inter vivos, he did not have priority over the children of the deceased including his own father. He hid that fact from the court pretending that only he and his brothers were entitled to inherit yet deceased had many grandchildren. He produced no evidence to support the claim that he was given the land by the deceased when deceased was alive. He concealed the fact the deceased had children who were alive including PW3.

5. In that matter, the appellants were the 6th and 1st Applicants respectively. The parties were:

James Muriithi Karanja
John Muraguri Karanja
Stephen Warutere Karanja
Rose Wahu Karanja
Douglas Wahome Karanja
Alexander Mwangi Karanja
Penina Wangechi Karanja
Ephraim Gathua Karanja.....Applicants

Versus

Bernard Koinga Gichini.....1st Respondent
Christopher Muchoki Kibui.....2nd Respondent

6. The appellants stated that they are not interested in the fraudulent succession cause number 83 of 2014. They stated that the appellate court determined that the Respondents are not beneficiaries of the estate. They averred that the respondents should be prosecuted for fraud in the former matter. The appellant stated that at page 15 the court found there is no interest. Indeed the court held as follows:

As soon as the same was transmitted to him he transferred it to a third party. He now argues that that interest is protected by s. 93 of LOSA.

In the Musa case above the Court of Appeal took a dim view of that kind of conduct. That respondent acquired the title fraudulently. He had no interest to pass on to the 2nd respondent.

93. Validity of transfer not affected by revocation of representation

(1) All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.

(2) A transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration

expenses, duties, and legacies of the deceased have not been discharged nor provided for.

Where a person has purchased property of a deceased person from the personal representative who has letters of administration, which were obtained fraudulently, surely that person's interest cannot be protected by the law.

The Court of Appeal in the *Musa* case found persuasiveness in the case of *Adrian Nyamu Kiugu vs. Elizabeth Karimi Kiugu and Anor* [2014] eKLR where the High Court at Meru referring to s. 93 LOSA stated:

“Whereas the above section states that a transfer by person to whom representation has been granted shall be valid notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act, I am of the considered view that such transaction can only be relied upon where the legal representative is entitled to grant of representation but not where one is not and where one has obtained the grant fraudulently. The purchaser in this cause came from the neighborhood of the objector and it is not possible that he did not know of the objector herein. I therefore find and hold the sale to be invalid...

The court went further to restate its position in ***In Jane Gachoki Gathecha vs. Priscilla Nyawira Gitungu and another*** [2008] eKLR where a purchaser claimed that he was not aware of, and was not a party to, the fraudulent dealings with the title in issue and was therefore not only protected under

S.93 (1) of the Law of Succession Act (Cap 60) but also section 143 of the Registered Land Act, this Court sitting in Nyeri stated this:

” We think, with respect, that there is a fallacy in invoking and applying the provisions of section 93(1) of the Law of Succession Act and the superior court fell into error in reliance of it. **The section would only be applicable where, firstly, there is a “transfer of any interest in immoveable or moveable property”** ... A thief acquires no right or interest which is transferable in stolen property. The transaction would be void ab initio and the property is traceable.”

7. The lower court heard the matter and directed that the estate be subdivided in the ratio of 8:4 between the first and second houses and equally between the children in both houses. The appellant was aggrieved and filed a Memorandum of Appeal dated 16.1.2025 raising the following grounds of appeal:

- (a) The learned magistrate erred in law and fact by failing to consider the Appellant’s submissions.
- (b) The learned magistrate erred in law and fact in failing to determine the issue of the sale agreement of 7.6.1970, hence occasioning prejudice to the Appellants.
- (c) The learned magistrate erred in law and fact in failing to find that Kionga Muriithi sold

Ruguru/Kiamariga/704 to Samuel Karanja Muriithi despite the overwhelming evidence.

- (d) The learned magistrate erred in law and fact in distributing the estate to persons who had renounced their right and were not interested.
- (e) The learned magistrate erred in law and fact in failing to find that the Appellants were creditors to the estate of the deceased.
- (f) The learned magistrate erred in law by failing to properly analyze the evidence before the court and give a reasoned judgment.

Pleadings

8. By the Summons for Confirmation of Grant dated 4.5.2021 and filed by the Appellants, the Appellants sought a Certificate of Confirmation of Grant in respect of the temporary grant dated 7.7.2020.
9. The Appellants were the administrators of the estate of the deceased who died on 5.5.1976. He was the registered owner of land parcel number Ruguru/Kiamariga/704, measuring 1.2 acres, which is the subject of these succession proceedings. In the Affidavit in support of the Summons for Confirmation of Grant, the Appellants described under paragraph 5 thereof the beneficiaries and their shares as follows:

- a. James Muriithi Karanja - Equal shares
- b. Alexander Mwangi Karanja - Equal shares

10. Under paragraph 2, it was described that the deceased left the following dependants:

- (a) Mwangi Kionga - son
- (b) Grace Njoki Mwangi - daughter
- (c) Alexander Mwangi Karanja - son
- (d) James Muriithi Karanja - stepson

11. The Respondents filed respective Affidavits of Protest dated 18.3.2024. By the said Affidavits, it was deposed as follows:

- a) The Respondents were children of Samuel Karanja Muriithi, who was a brother of the deceased.
- b) The deceased allowed the Appellants to utilize the land.
- c) The 2nd Respondent bought the land from the 1st Appellant as per the produced sale agreement.
- d) The parcel was transferred to the 2nd Respondent.
- e) The 2nd Respondent was an innocent purchaser for value.

12. In their joinder affidavit, sworn by the Appellants on 23.6.2022, the Appellants stated as follows:

- a. The Appellants had been in possession of the suit premises since 1976 as their only home.

- b. The Respondents had never lived on the land.
- c. The Appellants' father, Samuel Karanja Muriithi, who was a brother to the deceased herein, Kionga Muriithi, had bought the suit premises from the deceased.
- d. The 2 sons of the deceased, Mwangi Kiunga and Mutha Kiunga testified in Nyeri High Court Succession Cause No. 6 of 2017 that they were aware their father had sold the land to the Appellants' father.
- e. The sale agreement of the Respondents is null and void.

Evidence

13. During the hearing, PW1 was Benard Kionga Gichini, the 1st Respondent. He testified that the deceased gave him land. According to him, the Appellants did not live on the land. He sold land to the 2nd Respondent. On cross-examination, he referred to his sale agreement dated 16.12.2015. He got the title deed and sold the land. The land later reverted to his grandfather's name, the deceased. He stayed in Nanyuki, and someone guarded the land. The Appellants were grabbers.
14. PW2 was the 2nd Respondent. The land was in the deceased's name. The purchase price was Ksh. 1 million, but he paid Ksh. 1.5 million. He did not begin to stay on the land because he was told the 1st Respondent was on it.

15. The Appellants also testified. DW1 was James Muriithi Karanja. Samuel Karanja Muriithi was his brother. He was not a child of the deceased. The deceased was his father's brother. There was a case decision that reverted the title deed herein to the deceased.
16. DW2 was the 2nd Appellant. His father bought the land from the deceased. The 1st Respondent was the grandson of the deceased. It was his case that his father also had his own land. The title to the 2nd Respondent was canceled, and the land reverted to the deceased's name.
17. DW3 was Danson Gituto. He testified that he knew the Karanja family was using the land all along.
18. DW4 was Charles Njora. He did not know the Respondents. He knew the Appellants. The land in question belonged to Samuel Karanja, not the deceased.

Submissions

19. The Appellants filed submissions dated 23.10.2025. It was submitted that the trial court erred in failing to consider the material placed before it, particularly the document termed a sale agreement dated 7th June, 1970.
20. The Appellants submitted that their deceased fathers were creditors to the estate of the deceased. Reliance was placed on

Section 66 of the Law of Succession Act is in the following terms: -

"When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

- a. Surviving spouse or spouses, with or without association of other beneficiaries;
- b. Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by part v;
- c. The public trustee; and
- d. Creditors:

21. It was also submitted and reliance placed on the case of **In the Matter of the Estate of Mukhobi Namonya (Deceased)**, High Court at Kakamega, Succession Cause 136 of 2011 [2020] KEHC 9045 (KLR), where the court observed as follows regarding creditors of a deceased's estate: -

"Who exactly is the creditor of the estate or what ought to be treated as a liability of the estate. The most obvious candidates are individuals or entities that transacted with the deceased during his lifetime. Debts that the deceased left unsettled are a burden that the administrators of his estate ought to take care of. Transactions that he left incomplete, such as for sale of land by him or to him, should be completed by the administrators. The administrators are able to do so through the

powers conferred upon them by section 82 of the Law of Succession Act, being mindful of section 79, which vests the assets of the estate in the administrator. Section 83 imposes a duty on administrators to settle such debts before distributing the estate."

22. The Respondents filed submissions dated 29.1.2026. It was submitted that Succession proceedings are not the forum for determining disputed land ownership claims. It is a trite law that Probate Courts are not civil courts for determining land ownership, trusts, or the enforcement of incomplete contracts.

23. It was submitted that this court lacked jurisdiction except insofar as distributing the estate was concerned. The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. They relied on **in re Estate of Julius Ndubi Javan (Deceased) [2018] KEHC 8523 (KLR)**.

24. Therefore, the Probate Courts lack jurisdiction to determine the issue of an alleged sale, as it involve issues of land ownership and interests, which fall under the purview of the Environment and Land Court as per Article 162(2) & 165(5)(b) of the Constitution which confers exclusive jurisdiction over land disputes to the Environment and Land Court (ELC).

25. They also submitted that no suit for specific performance was filed during the deceased's lifetime or thereafter. No

decree exists. No enforceable obligation was shown to subsist against the estate. Long occupation, however emotive, does not elevate the Appellants to creditors within the meaning of section 66(d) of the Law of Succession Act.

Analysis

26. This being a first appeal, this court is under a duty to re-evaluate and assess the evidence and make its own conclusions. It must, however, keep at the back of its mind that a subordinate court, unlike the appellate court, had the advantage of observing the demeanor of the witnesses and hearing their evidence firsthand.

27. This Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong. In the case of **Mbogo and Another vs. Shah** [1968] EA 93, the court stated:

“...that this Court will not interfere with the exercise of judicial discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”

28. The duty of the first appellate court was set out in the case of **Selle and another Vs Associated Motor Board**

Company and Others [1968]EA 123, where the Judges in their usual gusto, held as follows;-

“.. this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of re-trial and the Court of Appeal is not bound to follow the subordinate Court’s finding of fact if it appears either that he failed to take account of particular circumstances or probabilities or if the impression of demeanour of a witness is inconsistent with the evidence generally.”

29. The Court is to bear in mind that it had neither seen nor heard the witnesses. It is the subordinate court that has observed the demeanor and truthfulness of those witnesses. However, documents still speak for themselves. The observation of documents is the same as the lower court as parties cannot read into those documents matters extrinsic to them.

30. This court’s jurisdiction to review the evidence should be exercised with caution. In the cases of **Peters vs Sunday Post Limited [1958] EA 424**, the court therein rendered itself as follows:-

“It is a strong thing for an appellate court to differ from the findings on a question of fact, of the judge who had the advantage of seeing and hearing the witnesses...But the jurisdiction to review the evidence should be exercised with caution: it is not enough that

the appellate court might have come to a different conclusion...”

31. This court does not have the advantage of seeing and hearing the witnesses as did the lower court, yet it must reconsider the evidence, evaluate it itself, and draw its own conclusions.

32. The Appellants' case was that they were nephews of the deceased. They obtained letters of administration on the strength of their father's purchasers' interest in the deceased's estate. Their father was described as a brother of the deceased. The deceased died in 1976, and the Appellant's father also died later the same year, 1976.

33. The Appellants' further case was that they were also creditors of the estate of the deceased, as the estate subject to the succession had been sold to their father during the lifetime of the deceased. However, the question of whether the appellants bought land or not is not for discussion herein. A court of coordinate jurisdiction decided this matter and is not open for debate. The court held as follows:

The evidence that the applicants' father was sold the land by his brother was quite overwhelming. The deceased's own son confirmed this and including the fact that his father's family never utilized that land and they left the area in the 70s. The 1st respondent did not produce any evidence to controvert that. He conceded that the applicants had always lived and utilized that land that in fact he had not known

where the land was and neither was it shown to him by his grandfather the deceased.

What the 1st respondent did falls squarely under s. 76;

(a) 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 and

(b) 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.

His unlawful actions cannot be allowed to stand as in the words of K.H. Rawal J (as she then was) In **Re Estate of Christopher Jude Adela (Deceased) [2009] eKLR** cited in the **Musa** case above, in reference to Section 93 of the Law of Succession Act;

“The correct reading of the said provisions will indicate that the transfer to a purchaser, if shown to be either fraudulent and/or upon other serious defects and/or irregularities can be invalidated... It shall be a very weak or unfair system of law if it gives a Carte blanche of absolute immunity against challenges to transfer of immovable properties of estate by a personal representative, it shall be simply against all notions of fairness and justice. No court can encourage such interpretation while a personal representative will be protected even while undertaking unethical or illegal action prejudicing

the interests and rights or right beneficiaries of the estate. In short, I do not agree that section 93 of the Act prohibits the discretion of the court to invalidate a fraudulent action by a personal representative.”

34. There is no appeal from this decision. The applicants referred to in the case above are the following:

James Muriithi Karanja

John Muraguri Karanja

Stephen Warutere Karanja

Rose Wahu Karanja

Douglas Wahome Karanja

Alexander Mwangi Karanja

Penina Wangechi Karanja

Ephraim Gathua Karanja

35. Having made the finding that the land was sold in 1976, the said parcel does not form part of the free property of the deceased. It is not available for succession. It is therefore irrelevant of who the dependants of the late Kionga son of Muriithi are. The property is not a free property of the said deceased pursuant to the sale in 1976. What then does the court do when such issues arise?

36. First there is already a determination that the deceased herein had sold Ruguru/Kiamariga/704 to his younger brother Samuel Karanja Muriithi sometimes on 7th June 1970 at a sum of Kshs. 400/= and the family of Samuel Karanja Muriithi

specifically the 1st and 2nd appellants took possession of the land, occupied and developed it ever since. The appellant's father Samuel Karanja Muriithi died in 1976, soon after the death of the deceased herein. This finding was not overturned on appeal. It is also not time barred. Determination of that issue is thus *res judicata*. In the case of **Attorney General & another ET vs (2012) eKLR** it was held that;

“The courts must always be vigilant to guard litigants evading the doctrine of *res judicata* by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff in the second suit is trying to bring before the court in another way and in form of a new cause of action which has been resolved by a court of competent jurisdiction. In the case of Omondi s NBK & Others (2001) EA 177 the court held that “parties cannot evade the doctrine of *res judicata* by merely adding other parties or causes of action in a subsequent suit”.

In that case the court quoted Kuloba J, (as he then was) in the case of Njanju vs Wambugu and another Nairobi HCC No. 2340 of 1991 (unreported) where he stated: If parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some cosmetic face lift in every occasion he comes to court, then I do not see the use of doctrine of *res judicata*.....”.

37. In essence therefore, the doctrine implies that for a matter to be res judicata, the matters in issue must be similar to those which were previously in dispute between the same parties and the same having been determined on merits by a court of competent jurisdiction. The court in the English case of **Henderson v Henderson (1843-60) All E.R 378**, observed thus:

“...where a given matter becomes the subject of litigation in, and of adjudication by a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special case, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

38. Res judicata applies to applications just like suits. In the case of **Julia Muthoni Githinji v African Banking Corporation Limited [2020] eKLR** the court stated thus:

14. After a careful reappraisal of the application for injunction before the lower court, I have come to the conclusion that the application was res judicata and the entire suit was sub judice as there was an active pending suit before a court of competent jurisdiction, being Nakuru ELC No. 272 of 2017. All issues raised in the suit before the subordinate court could be properly litigated in the suit pending before the ELC. The filing of the suit by the appellant in the subordinate court when she had a similar suit in the ELC Court was an abuse of the Court process which the Court cannot countenance.

39. In **Maumbwa & 3 others v Kisemei** (Civil Appeal E009 of 2021) [2022] KEHC 10416 (KLR), the court stated doth:

By comparing the two applications and the authorities on res judicata, it is clear to me that the issues being canvassed in the application dated 11th January 2021 is res judicata. The issues in issue in that application were directly and substantially in issue in the application dated 13th September 2017. These issues relate to the same parties and these issues have been tried by a competent court. To my mind to bring the same issues between the same parties that have been determined by a court of competent jurisdiction is an abuse of the court process.

40. In effect the land was sold to Samuel Karanja Muriithi. The court is then faced with a different dilemma. The High Court having found that the respondents herein are busy bodies,

what does this court then do. The court will not deal with the question of sale as it is already dealt with. The property is not free property of the deceased notwithstanding the same being registered in the name of the deceased herein. The issue of sale cannot be dealt by any other court having been concluded in Succession Cause 6 of 2017. I will therefore set aside the judgment of the court as it contradicted a High Court decision in situ over the same estate. The court will direct that the suit land be registered in the name of the late Samuel Karanja Muriithi. Succession shall then be carried out in that estate.

41. This leaves the issue of costs, which is governed by Section 27 of the Civil Procedure Act, which provides as follows:

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per

annum, and such interest shall be added to the costs and shall be recoverable as such.

42. Costs are generally discretionary. However, the discretion is not arbitrary. The Court of Appeal in the case of **Farah Awad Gullet v CMC Motors Group Limited** [2018] KECA 158 (KLR) had this to say:

It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning. Secondly, that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.

43. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of **Rai & 3 others v Rai & 4 others** [2014] KESC 31 (KLR), as follows:

18. It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest

will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation

22. Although there is eminent good sense in the basic rule of costs - that costs follow the event- it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings - a position well illustrated by the considered opinions of this Court in other cases. The relevant question in this particular matter must be, whether or not the circumstances merit an award of costs to the Applicant.

44. Costs follow the events. The parties have traversed the court corridors for several years. Though the appellants have been successful, they ought to have moved to enforce the decision in HC succession Cause Number 6 of 2017. They did not do so, resulting in this second or third matter. Each party will bear its costs. This matter and HC Succession 6 of 2017 shall remain together for historical reasons.

45. Consequently, each party shall bear their own costs.

Determination

46. In the upshot, I make the following orders:

- a) The appeal is merited and is accordingly allowed. The decision by Hon. E. Kanyiri (Principal Magistrate) dated

20.12.2024 in Karatina PMCSUCC Cause No.E052 of 2020 is set aside. In lieu thereof, I find as follows:

- i. The question of the sale of land parcel number Ruguru/Kiamariga/704 to Samuel Karanja Muriithi (deceased) is *res judicata* in Nyeri HC Succession Cause Number 6 of 2017.
- ii. By dint of the said decision, the question of the sale of land parcel number Ruguru/Kiamariga/704 to Samuel Karanja Muriithi is *res judicata*.
- iii. Land parcel number Ruguru/Kiamariga/704 is not free property of the deceased Kionga S/O Muriithi Alias Kiunga Muriithi (Deceased).
- iv. The administrators shall transfer the said parcel to the estate of the late Samuel Karanja Muriithi, within 30 days, in default, the Executive Officer or the Deputy Registrar, as the case may be, to execute the transfer on behalf of both estates.
- v. The respondents are busy bodies by dint of the decision in Nyeri HC Succession Cause Number 6 of 2017.
- vi. The appellants shall be free to initiate succession in respect of their patriarch, Samuel Karanja Muriithi (Deceased).
- vii. Each party to bear their own costs.

viii. The file is closed.

DELIVERED, DATED and SIGNED at **NYERI** on this **23rd** day of **April, 2026**. Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE
JUDGE

In the presence of: -

Mr. Peter Muthoni for Mr. Kimunya for the Appellants

Ms. Ngugi for the Respondents

Court Assistant - Michael