



In re Estate of Jackson Kiaira alias Jackson M'kiaira Gacoro alias Jackson M'kiaira Gachoro (Deceased) (Succession Cause 381 of 2008) [2025] KEHC 2832 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2832 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 381 OF 2008
HM NYAGA, J
FEBRUARY 27, 2025**

IN THE MATTER OF THE ESTATE OF JACKSON KIAIRA ALIAS JACKSON M'KIAIRA GACORO ALIAS JACKSON M'KIAIRA GACHORO -DECEASED.

BETWEEN

JOHN MURRITHI MEMEU 1ST PETITIONER

STEPHEN N J N KINGE 2ND PETITIONER

AND

CHARITY KARWIRWA 1ST RESPONDENT

JOSEPHINE NKATHA 2ND RESPONDENT

ZIPPORAH KATHIRI 3RD RESPONDENT

RULING

1. The deceased herein died on 1st December 2000. Subsequently, a grant of letters of administration were issued to John Murithi Kimeu and Stephen N.J.N. Kienge on 10th January 2009. The grant was confirmed on 8th February 2010 where it only listed one property namely Ntima/Igoki/1369. The grant was rectified on 27th April 2015, and added land parcel No 221 Ruiru/Rwarera Adjudication Section. The confirmed grant was further rectified on 18th December 2018 and again on 24th October 2019.
2. From the court record, there was an application dated 29th October 2021, which sought a review of the orders issued on 16th December 2022. That application was settled in terms of the consent dated 2/6/2022, specifically in respect to the property No 221 Ruiru/Rwarera Adjudication Section. The court then ordered that the protest in respect of Ntima/Igoki/1369 to proceed for hearing.
3. The objector, Josephine Nkata Gikandi stated that the deceased died intestate and left two parcels of land namely:-Ntima/Igoki/1389Ruiru/Rwarera/221 Adjudication Section.



4. It was her proposal that she be given half an acre of the parcel Ntima/Igoki/1369. She did not object to the proposal to distribute the other parcel of land.
5. The Petitioner stated that they found that land parcel No 1369 had been sold off. It was thus agreed that they give up their share in that land and that their share in Ruiru/Rwarera 221 be increased accordingly. That to that end, she ended up getting 4 acres instead of 3 in that land. Josephine who was to get 2 acres, ended up getting an additional acre. That the meeting by the family resolved that the dispute and any claims in parcel 1369.
6. John Murithi Mumeu stated that at the time the court made a ruling over land parcel No 1369, in reality that land had been sold off and sub-divided, and other people had developed their property thereon. That it was for that reason that the parties entered into a consent, whereby those who got land at Ntima /Igoki/1369 got less at Ruiru/ Rwarera 221. The daughters including the objector, got bigger shares in the latter to compensate for what was lost in Ntima /Igoki/1369. That Josephine who had initially refused to cooperate, did so when the parties appeared before the court.
7. At the close of the objection hearing Ms Gikundi made brief submissions, summing up the matter in dispute. She submits that pursuant to the consent recorded in court, the beneficiaries who got land at plot 1369 got less land at plot 221 but in the end all parties got equal parcels of land. She submits further that the proposal by Josephine will mean demolishing other people's structures. She thus sought that the court abides by the consent recorded in court.
8. I have looked at the matter before me. Indeed, after the Judgement of the court was delivered, the parties, including the protestor, in order to ensure equality, agreed that those who had gotten land at plot 1369 got less land at parcel 221. Those who did not get land got bigger shares in parcel 221. They then recorded a consent in court.
9. In my view, the proposal by Josephine is an attempt to review the consent order that she fully participated in. It is trite law that a consent order can only be set aside on ground that would justify the setting aside of a contract. This was set out in *Flora Wasike v Destimo Wamboko* (1982 -1988)1 KAR 625, where it was held as follows:

“It is now settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out.”
10. The objector not saying that there was any fraud or other ground that can be raised to review the consent.
11. Her claim is actually an attempt to get a bigger portion of land. The land she ought to have gotten in plot 1369 was compensated by an extra acre in plot 221, given the circumstances on the ground. Indeed, she gets an equal share to the other daughters, who are content with the arrangement.
12. I am therefore of view that the objection by the said Josephine was overtaken by the consent that she subsequently entered into in court.
13. The objection is thus not merited.
14. The parties are to abide by the consent recorded in court.
15. There shall be no orders to costs.

SIGNED, DATED AND DELIVERED AT MERU THIS 27TH DAY OF FEBRUARY 2025



H.M. NYAGA
JUDGE

