



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Jane Wangari Waiyaki (Deceased) (Succession Cause
1098 of 2002) [2025] KEHC 4226 (KLR) (Family) (25 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4226 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1098 OF 2002
CJ KENDAGOR, J
MARCH 25, 2025**

BETWEEN

**MIRIAM GATHONI WAMBAA 1ST APPLICANT
WATSON WAIYAKI GITHAGUI 2ND APPLICANT
PETER WAMAGATA WAIYAKI 3RD APPLICANT**

AND

**GLADYS WANGARI IRUNGU 1ST RESPONDENT
BEN GITHIEYA WAIYAKI 2ND RESPONDENT**

RULING

1. This ruling relates to a Preliminary Objection raised by the Respondents, Gladys Wangari Irungu and Ben Githieya Waiyaki against the Applicants' Summons for Revocation dated 17th August, 2023.
2. Jane Wangari Waiyaki (the deceased) died testate on 28th September, 1998. She left a written will dated 7th June 1993. She appointed Jasper Mwathani Mbaka as the executor. Grant of probate with will was issued to the executor on 21st April, 2005. The said grant was confirmed on 31st January, 2012. The executor died on 1st September, 2016 before completing administration of the estate.
3. An application dated 26th July, 2019 was filed for revocation on the grounds that the grant had become useless and inoperable because of the executor's death. Vide a Ruling dated 18th October, 2022, the Court revoked the grant issued to Jasper Mwathani Mbaka. It appointed Miriam Gathoni Wambaa (1st Applicant), Peter Wamagata Waiyaki (3rd Applicant), Gladys Wangari Irungu (1st Respondent) and Ben Githieya Waiyaki (2nd Respondent) as joint administrators. They were also issued with a Certificate of Confirmation.



4. The Applicants filed Summons for Revocation of Grant dated 17th August, 2023. They sought the following orders;
 1. That the Honourable Court be and is hereby pleased to revoke the grant of letters administration testate issued to Miriam Gathoni Wambaa, Peter Wamagara Waiyaki, Gladys Wangari Irungu and Ben Githeiya Waitaki on 18th October 2022.
 2. That the Honourable Court be and is hereby pleased to issue a fresh grant of probate to Miriam Gathoni Wambaa, Peter Wamagata Waiyaki, Watson Waiyaki Githagui and Ben Githieya Waiyaki and confirm the grant testate as per the written will of Jane Wangari Wiyaki (Deceased) dated 7th June 1993.
 3. That the Honourable Court be and is hereby pleased to revoke, review, vary or set aside the orders issued by Justice Kimaru (as he then was) on 18th March 2014 and all consequential orders and action taken and the deceased's property known as Dagoretti/Kinoo/28 do revert back to the estate and all the subsequent subdivisions being LR No Dagoretti/Thogoto/3930, LR No Dagoretti/Thogoto/3931 and LR No Dagoretti/Thogoto/4029 or any other further subdivision be cancelled by the Land Registrar Kiambu forthwith.
 4. That the Honourable Court be and is hereby pleased to grant any other orders as it may deem fit and just under the circumstances.
 5. That the costs of this Application be in the cause.
5. In response, the Respondents filed a Notice of Preliminary Objection dated 17th October 2023. They raised the following grounds of opposition;
 1. That this Honourable Court lacks jurisdiction to determine the application as the same seeks to challenge decisions of courts of concurrent jurisdiction by way of a disguised appeal.
 2. That the application is incompetent and incapable of supporting the orders sought.
6. The Court directed that the Preliminary Objection be heard first. The Preliminary Objection was canvassed through written submissions. The Applicants filed written submissions dated 31st December, 2024, while the Respondents' submissions are dated 18th November, 2024.

Analysis and determination.

6. Does the preliminary objection meet the threshold of such an objection? In the locus classicus case of *Mukisa Biscuits Manufacturing Company Limited v West End Distributors* (1969) EA 696, the Court stated on preliminary objections:

“A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”.
6. In this case, the issue arising here is jurisdiction. The Respondent has argued that this Court lacks jurisdiction to entertain the application dated 17th August, 2023 because it seeks to challenge the decisions of Courts of concurrent jurisdiction by way of a disguised appeal.



7. The property in issue, which is the substratum of the application that the Preliminary Objection is about, is parcel Dagoretti/Kinoo/28, (captured as Dagoretti/Thogoto/28 in the Will) which has subsequently been distributed and new numbers issued. The property, in its original number, was part of the properties listed in the deceased's Will, and as per the Will, the property devolved to David Kuria Waiyaki, Ben Githieya Waiyaki, Grace Wanjiku Koine, and Watson Waiyaki Njoroge.
8. The Court dispensed with the production of the original title in the order that was issued on 1st October, 2014. The decision was by Hon. Justice Luka Kimaru, as he then was. That application was dated 13th February, 2014 and was jointly filed by the Respondents against the executor. The order was to give effect to the subdivision in line with the Certificate of Confirmation of Grant dated 31st January, 2012.
9. Thereafter, several proceedings before the Court followed, including the application to appoint the new administrators after the executor's death. In the decision of 18th October, 2022, the Grant was for the administration of the remaining part of the estate and not Dagoretti/Kinoo/28, which had already been distributed. The application presently before court has advanced some grounds in (ix) and (x) that touch on the findings of Hon. Justice Muchelule (as he then was) on the issue of signing of consent and reference of the parties.
10. There are also other proceedings in Kiambu High Court Succession Appeal E028 of 2022 between the 1st Respondent and one Miriam Wairimu Kuria in Kikuyu SPM Court Succession Cause No 39 of 2013 in the estate of David Kuria Waiyaki, a son of the deceased herein. The proceedings relate to the property indicated as Dagoretti/Thogoto/28, the same property referenced as Dagoretti/Kinoo/28 in this file. An appeal is pending in the High Court regarding the dismissed application for revocation of the grant that Miriam lodged.
11. Can this Court then proceed to hear and determine the application dated 17th August, 2023 for revocation of grant?
12. The issue of the parcel Dagoretti/Kinoo/28 no longer being available for distribution was dealt with in the Ruling dated 18th October, 2022. The Parties were all the same, and they had an opportunity to litigate the issue at the determination of that application. No appeal has been lodged. Hon. Justice Kimaru's orders (as he then was) allowed implementation of the first certificate of confirmation of grant while the executor was still alive. Additionally, the requirement for the production of the original title for distribution purposes and the signing of transfer documents was determined at that time on merit.
13. It is thus improper to file another application and have the Court examine the presented issues again. Since there is another case involving the Kikuyu SPM Court and the Kiambu High Court concerning the same parcel of land, it would constitute an abuse of the court process for this Court to address the same issues raised. This Court views the present application as an effort to circumvent existing orders that have already been issued and are currently under appeal.
14. The Preliminary Objection dated 17th October, 2023 is upheld. The application dated 17th August, 2023 is struck out. Each party to bear own costs.
15. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 25TH DAY OF MARCH, 2025.

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C. KENDAGOR

JUDGE

In the presence:

Court Administrator: Beryl

Mr. Kabue Advocate for the Respondent

No attendance by the Applicant

