



REPUBLIC OF KENYA



KENYA LAW
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Githaka v Kamori; Muiruri (Intended Interested Party) (Civil Appeal E046 of 2021) [2025] KEHC 12423 (KLR) (3 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12423 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E046 OF 2021
EM MURIITHI, J
SEPTEMBER 3, 2025**

BETWEEN

MWANIKI GITHAKA APPELLANT

AND

SUSAN KAMORI RESPONDENT

AND

NAHASHON MURIMI MUIRURI INTENDED INTERESTED PARTY

RULING

1. By a Notice of Motion dated 29/1/2025 pursuant to section 29 of the *Law of Succession Act*, the Applicant/Intended Interested Party seeks that:
 1. The intended interested party be enjoined in this matter as such.
 2. The cost of this application be provided for.
2. The application is premised on the grounds on the face of it and the supporting affidavit of the Applicant sworn on even date. He avers that he is a grandson and a dependant of the estate of Kithaka Mwaniki, the deceased herein, who brought him up and educated him. During his lifetime, the deceased bequeathed him one acre of L.R No. Mwerua/Kithumbu/1657 where he constructed a semi-permanent timber walled house. He participated in Baricho Succession Cause No. 54/2017, where L.R No. Mwerua/Kithumbu/3603 was eventually registered in his name. Vide a consent recorded at Baricho Succession Cause No. 54/2017, without his contribution, all the entries pertaining the estate were inhibited and the same reverted to the deceased, and he stands to suffer damage unless the orders sought are granted.
3. The Respondent swore a replying affidavit on 21/3/2025 in support of his application.



4. Susan Wambui Wangithi swore an affidavit on 21/3/2025 in support of the application, and in opposition to the adoption of the consent order dated 21/1/2025.
5. The Appellant swore a supplementary affidavit on 25/2/2025 in opposition to the application. He strenuously denied the contention that the deceased had bequeathed any portion of the estate to the Applicant, and counselled the Applicant to pursue his claim through his mother, Faith Wanjiku Githaka, a daughter of the deceased.

Submissions

6. The Applicant cites *Hopf v Director of Survey & 2 others; Sakaja & 2 others (Interested Parties) (Environment & Land Case 4 of 2021) [2022] KEELC 6 (KLR) (4 May 2022) (Ruling)* on the conditions for joinder of parties. He urges that it is paramount that he be enjoined so that he can champion his cause in the suit.
7. The Appellant urges that the Applicant has no locus standi in these proceedings, as he is not a beneficiary of the estate, and cites *Re Estate of Godana Songoro Guyo (Deceased) [2020] KEHC 3970 (KLR)*, *Estate of the late Gedion Manthi Nzioka (Deceased) [2015] KEHC 944 (KLR)*, *Kenya Medical Laboratory Technicians and Technologists Board & 6 Others v Attorney General & 4 others (2017) eKLR*, *Erdermann Property Limited v Credit Bank Limited; Mavoko Water Sewerage Company Ltd (MAVWASCO) (Applicant) (Civil Case E419 of 2022) [2024] KEHC 10207 (KLR) (Commercial and Tax) (16 August 2024) (Ruling)* and *Meme v Republic [2004] 1 EA 124*. He cites *Communications Commission of Kenya & 4 Others v Royal Medial Services & 7 Others (2014) eKLR* in urging that the Applicant will not suffer any prejudice if joinder is denied as he has failed to demonstrate that the 1 acre of the estate was a gift inter vivos and that it was complete. He urges that the Applicant has no legal rights to benefit from the estate, and neither can he bring a suit on his own as a grandson if his mother is alive.
8. The Respondent did not file any submissions.

Analysis and determination

9. The sole issue for determination is whether the Applicant is a necessary party to be joined to these proceedings.
10. The pre-requisites to be fulfilled before a party can be joined to proceedings were set out in *Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated)) [2016] KESC 12 (KLR) (Civ) (28 January 2016) (Ruling)*, where the Supreme Court rendered thus;

“Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements: The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”



11. In the similar breath, in *Civicon Limited v Kivuwatt Limited & 2 others* (2015) eKLR, the Court of Appeal said as follows:

“From the forgoing the power of the court to add a party to a suit is wide and discretionary, the overriding consideration being whether he has interest in the suit. The question is whether the right of a person may be affected if he is not added as a party. Generally in exercising this jurisdiction the court will consider whether a party ought to have been joined as plaintiff or defendant, and is not so joined, or without his presence, the question in the suit cannot be completely and effectively decided. Accordingly, a necessary party is one without whom no order can be made effectively, while a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings.”

12. The Applicant’s quest for joinder is predicated upon a gift inter vivos allegedly made to him by his grandfather, the deceased herein during his lifetime, which assertion is vehemently denied by the Appellant.
13. The undisputed facts in this case are that the Applicant is a grandson of the deceased as son to a daughter to the deceased, namely Faith Wanjiku Githaka, who is alive. The law presupposes that a grandson cannot directly inherit from the estate of his grandfather during the lifetime of their parents. Such inheritance claims ought to be prosecuted by the parents themselves, who are the direct beneficiaries of the estate.
14. I would respectfully recall the decision in *In the Matter of the estate of Veronica Njoki Wakagoto (Deceased)* [2013] KEHC 1930 (KLR), where Musyoka J. said as follows:

“Under Part V, grandchildren have not right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents’ indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents. In this case, the applicant’s mother survived the deceased. She is the one entitled under Part V to inherit her mother, the applicant’s deceased grandmother. The applicant clearly has no claim under Part V so long as his mother survived the deceased.”

15. It would follow that a grandchild’s purported stake in the estate of a deceased is duly safeguarded by his parent, his absence notwithstanding. This would appear to be the case if the applicant was seeking to get the share of the deceased’s estate going to his mother’s house.
16. But the applicant is not seeking joinder so that he can pursue a share of inheritance that comes to him as a member of the family of his mother’s house. The case appears to be that the suit property was gifted to him by his grandfather and it is not part of his intestate estate. On the test for joinder in *Muruatetu*, supra, the applicant has demonstrated interest proximate enough to the proceedings as it relates to his entitlement to an asset subject of these succession proceedings; and the prejudice to be suffered by the intended interested party in case of non-joinder is direct and not remote, as he stands to lose the property previously registered in his name.



17. With respect, this is an identifiable interest, which only the applicant can pursue. There is an arguable case whether the deceased gifted the applicant during his lifetime and whether the gift was complete. But the arguable case need not be one that must succeed. In joining the applicant in the Civicon case, the Court of Appeal said as follows:

“From the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed.

We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial. In the present case, it is our view that the circumstances of the case would require the participation of the appellant in the suit, owing to its direct connection to the subject matter of the suit which is in its physical custody on alleged claim for lien for unsettled bills.”

18. The Court finds merit in the application for joinder, and the applicant shall be joined as an interested party in the proceedings so that his claim to have been given the suit asset is heard and determined alongside the inheritance dispute before the court.

Orders

19. Accordingly, for the reasons set out above, the court finds that the Applicant’s application dated 29/1/2025 is merited and it is allowed as prayed.
20. There shall be no order as to costs

Order accordingly.

DATED AND DELIVERED THIS 3RD DAY OF SEPTEMBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Wachira for the Appellant.

Mr. Nahashon Murimi, Intended Interested party in person.

N/A for the Respondent.

