



**In re Estate of Harun Mbugua Wangendo (Deceased) (Succession Cause 1029 of 2016) [2024] KEHC 1732 (KLR) (Family) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1732 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 1029 OF 2016  
HK CHEMITEI, J  
FEBRUARY 22, 2024  
IN THE MATTER OF THE ESTATE OF HARUN MBUGUA WANGENDO (DECEASED)**

**BETWEEN**

**DIANA WANJIRU WANGENDO ..... APPLICANT**

**AND**

**HARUN MBUGUA WANGENDO ..... RESPONDENT**

**RULING**

1. In her chamber summons application dated 8<sup>th</sup> May 2023 the applicant prays for the following orders:
  - (a) Spent
  - (b) Spent
  - (c) That pending the hearing and determination of this succession proceedings an order of inhibition be issued prohibiting any dealings either by way of subdivision, lease, charge, transfer or any dealings whatsoever on land parcels number Gatamaiyu /Kamburu/3154, 3155, 3156, 3157, 3158 and 3159.
  - (d) That any dealings by way of subdivision, lease, charge, transfer and sale or any disposition whatsoever or entries made in the land register after 25<sup>th</sup> October 2006 with respect to all land parcel known as Gatamaiyu /Kamburu/1010 be and is hereby nullified and or cancelled and the Land Registrar Kiambu be ordered to reinstate the said property back to the name of the deceased.
2. The applicant prayed for costs of the application.



3. The application is premised on the grounds on the face of the application as well as the sworn affidavit of the applicant dated the same date.
4. The applicant as well as the respondent are deceased children herein and both are administrators to the estate of the late father as per the grant issued on 30<sup>th</sup> April 2018.
5. The suit property known as Gatamaiyu /Kamburu /1010 was according to her registered in the name of the deceased who died on 25<sup>th</sup> October 2006. It is her case that the respondent transferred the said parcel of land to himself sometimes on 21<sup>st</sup> November 2016 without obtaining letters of administration.
6. The respondent thereafter caused the said land to be subdivided into various portion as exhibited on the summons. She deponed that the caution which she had placed on the register was removed *vide* case number Kiambu CMCC Misc. case E124 of 2021 without her knowledge.
7. It is her case that the action by the respondent was illegal as it ran contrary to the Succession Act as the transfer was effected 11 years after the death of the deceased and without the grant of letters of administration first being obtained and confirmed.
8. The respondent apart from transferring the land to himself caused the same to be subdivided and transferred to other third parties as per the official searches annexed to the affidavit. The applicant therefore prayed for the application to be allowed.
9. The respondent vide his replying affidavit sworn on 19<sup>th</sup> June 2023 has opposed the application stating that he had lived on the suit parcel of land namely Gatamaiyu /Kamburu /1010 since 1990 and during the lifetime of their father, the deceased herein who gave it to him together with the original title deed.
10. It was his response that the same has never been part of the deceased properties available for distribution and that none of his other siblings has any issue with the same except the applicant.
11. He went ahead and cited land parcel number Gatamaiyu /Kamburu /107 which the deceased during his lifetime gave to one Jane Wanjiru Wangendo their other sister.
12. He denied that there was any fraud in the transfer and subdivision of the aforesaid parcel of land. He prayed that the application be dismissed.
13. The court directed the parties to file written submissions which they have complied.
14. The central issue raised by the parties is whether the deceased action of giving the original title to the respondent and allowing him to use and reside on the suit land amounted to granting him the right to transfer to himself and or subdivide and transfer to other third parties.
15. It is not disputed that the parties herein have a legitimate stake in the estate and that is why they are both joined administrators. It is also not disputed that the land has been subdivided and transferred to other third parties.
16. In my view and since the estate is yet to be distributed, the best way to do is to preserve the same. There are other interested parties who have been issued with titles and their rights and interest have to be considered one way or another.
17. Whether the action by the respondent of transferring to himself without a confirmed grant and thus running afoul Section 45 of the Succession Act and other related sections is an issue which must be determined by way of oral evidence.



18. The other issues raised by the applicants are germane but for the reason that the estate is yet to be distributed this court for now shall refrain itself from commenting over them.
19. I do not find the submission by the respondent that this court is not seized with jurisdiction acceptable. This is a succession cause and the estate to the extent that it has not been distributed to the beneficiaries must be dealt with by this court and not the Environment and Land Court as suggested by the respondent.
20. In the premises I think I have stated much to show that there is merit in the application and the same is hereby allowed as hereunder;
  - (a) Pending the hearing and determination of this cause an order of inhibition is hereby issued prohibiting any dealings, leasing, transfer, charging or in any way dealing with land parcels number Gatamaiyu /Kamburu/3154,3155,3156,3157,3158 and 3159.
  - (b) Costs shall await the outcome of the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 22<sup>ND</sup> DAY OF FEBRUARY 2024.**

**H K CHEMITEI**

**JUDGE**

