



REPUBLIC OF KENYA



**In re Estate of Morrision Muhika Njoroge (Deceased) (Succession Cause  
124 of 1996) [2024] KEHC 4899 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4899 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 124 OF 1996  
RN NYAKUNDI, J  
APRIL 25, 2024**

**IN THE MATTER OF THE ESTATE OF MORRISION MUHIKA NJOROGE (DECEASED)**

**ELIZABETH WANJIRU MUHIKA .....1ST APPLICANT**

**STEPHEN NJOROGE MUHIKA .....2ND APPLICANT**

**VERSUS**

**MICHAEL PETER NJOROGE.....RESPONDENT**

**RULING**

1. By Chamber Summons dated 27/5/2022 and filed on 14/7/2022, the Applicants seek others that:
  1. Spent.
  2. That this Honourable Court do ,make appropriate orders as far as allocation of 9 acres of unregistered parcel of land at Langas within Uasin Gishu county allocated to Susan Wanjiru Njoroge.
  3. Cost of this application be in the cause.
2. The application is premised on the grounds therein and is further supported by the affidavit sworn on 27/5/2022 by Stephen Njoroge Muhika, the 2<sup>nd</sup> Applicant.

**The Applicants' Case**

3. The Applicants deposed that the deceased herein were their father and mother respectively and that one Johnson Mburu Karichu, Michael Peter Njoroge and Clement Kinuthia Njoroge applied for Letters of Administration to the estate herein we they were still minors and which letters were thereafter issued to them and were later confirmed by the Court on 22/9/2003 when they were still minors. The Applicants contend that while distributing the estate, the aforesaid administrators gave 9 acres of unregistered land to their mother one Susan Wanjiru Njoroge without their consent. The Applicants maintains that at the time when the estate was being distributed they were minors and they were not consulted and neither did they give their consent to distribute. According to the Applicants the 9 acres



of land formed part of the estate of their late parents and that the aforesaid administrators intermeddled with estate and were later removed and replaced by them. The Applicants maintain that the 9 acres of land was never transferred and or transmitted to the said Susan Wanjiru Njoroge and that the said Susan Wanjiru Njoroge is now deceased. According to the Applicants, it is only fair that the proceedings leading to the confirmation of grant be set aside and that the 9 acres be given to them in equal shares.

### **The Respondent's Case**

4. The application is opposed by the Respondent vide his affidavit sworn on 28/6/2022. The Respondent contends that the sole purposes of this instant application is to defeat the rightful entitlement of his late mother Susan Wanjiru Njoroge. The Respondents further contends that the issue that the Applicants were minors is not a legal issue as their interests had been taken care of in the Confirmed Grant. The Respondent maintains it was not sheer calculation to grant the late Susan Wanjiru Njoroge the 9 acres of unregistered land. The Respondent maintains that the said Susan was a beneficiary in the estate and such she got her rightful share. The Respondent denies allegations of intermeddling but instead deposed that the sole reason why the Applicants herein were appointed as administrators is that they had attained the age of majority. The Respondent maintains that the said 9 acres of land was transferred to Susan Wanjiru Njoroge as it was required.
5. The Respondent on 11/12/2023 filed a Supplementary Affidavit in which deposed that the issue regarding the unregistered 9 acres of land was an issue that had already been heard and determined by this Honourable Court. The Respondent further deposed that the Applicants herein had filed Summons dated 8<sup>th</sup> October, 2019 in this instant case seeking for the rectification of the Confirmed Grant on the basis of reallocation of the unregistered 9 acres of land which is still the subject matter in the instant application. The Respondent maintains that a ruling was delivered by Lady Justice Hellen Omondi on 24/11/2020 wherein she found that the said parcel of land was legally given to Susan Wanjiru Njoroge and that the Applicants herein had no right to claim the said property. The Respondent further deposed the judge therein further stated that she could grant him ownership of the unregistered 9 acres of land given to Susan Wanjiru Njoroge (deceased) if he instituted succession proceedings with respect to her estate and that thereafter a Succession cause was filed with respect to the estate of the late Susan Wanjiru Njoroge where the unregistered 9 acres of land was part of the said estate. The Respondent maintains said cause was filed in 2021 before this cause was instituted and that they were ultimately granted a Rectified Certificate of Confirmation of Grant dated 17/11/2022 which contained the said 9 acres.
6. In a re-joinder, the Applicants on 29/1/2024 filed further affidavit in which they deposed that the application dated 8/100/2019 was an application seeking the rectification of the grant of letters of administration herein. The Applicants maintain that the Court in said ruling directed that they make an application for revocation of grant and not amendment which they accordingly filed on 16/2/2021. The Applicants maintains that when the said application came up for hearing on 28/3/2022, the Court directed that the parties do file an application for setting aside the proceedings for confirmation of grant instead of seeking revocation and that in compliance with they said directions they then filed this instant application. The Applicants further maintain that this Court in its judgement of 24/11/2020 while ruling on the Respondent's application to be granted 24/11/2020 while ruling on the Respondent's application to be granted the 9 acres of land directed that the Respondent must file a succession cause in relation to the estate of Susan Wanjiru Njoroge once transmission is effected. According to the Applicants no transmission has been effected a fact that the Respondent admits and as such they contend that the filing of the succession cause was thus done prematurely and that no distribution has been done regarding the estate of Susan Wanjiru Njoroge. According to the



Applicants, they are the only ones who can effect the said transmission them being administrators of their late parents estate.

### Determination

7. Having appreciated the parties pleadings on record. The only issue for is whether this instant application is res-judicata.
8. The substantive law on res judicata is found in Section 7 of the [Civil Procedure Act](#) Cap 21 which provides that:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court”

9. The [Black's law Dictionary](#) 10<sup>th</sup> Edition defines “res judicata” as

“An issue that has been definitely settled by judicial decision...the three essentials are (1) an earlier decision on the issue, (2) a final Judgment on the merits and (3) the involvement of same parties, or parties in privity with the original parties...”

10. 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 ER 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.”

11. In the case of [Christopher Kenyariri v Salama Beach](#) (2017) eKLR, the court clearly stated the ingredients to be satisfied when determining res judicata thus;

“...the following elements must be satisfied...in conjunctive terms;

- a) The suit or issue was directly and substantially in issue in the former suit
- b) Former suit between same parties or parties under whom they or any of them claim
- c) Those parties are litigating under the same title
- d) The issue was heard and finally determined.



e) The court was competent to try the subsequent suit in which the suit is raised.”

12. In order therefore to decide whether this case is res judicata, a court of law should always look at the decision claimed to have settled the issues in question and the entire pleadings of the previous case and the instant case to ascertain;
- (i) what issues were really determined in the previous case;
  - (ii) whether they are the same in the subsequent case and were covered by the decision of the earlier case.
  - (iii) whether the parties are the same or are litigating under the same title and that the previous case was determined by a court of competent jurisdiction.
13. Applying the foregoing to the present case, I note that the gist of the application dated 27/5/2022 revolves around the question of the allocation of the unregistered 9 acres land located in Langas within Uasin Gishu County. Can one say then the issue of the subject land has already been heard and determined by a Court of competent jurisdiction?
14. This Court on 24/11/2020 rendered a ruling on an application dated 8/10/2019 that had been filed by the Applicants, and among the issues for determination was who is the rightful beneficiary of the 9 care parcel. In her decision Lady Justice Hellen Omondi, quoted the provision of Section 29 of the *Law of Succession Act* which defines the meaning of a dependant. She went further ahead to observed as follows;

“ this means that Susan fell in category of (b) of Section 29 as a parent of the deceased and if the Applicants are of the view that she was not entitled to inherit, then they ought to have sought revocation of the grant, and not a simple amendment. From the confirmed grant the 9 acres was given to Susan, and there is nothing whatsoever to suggest that she was holding the same in trust for the Applicants (who by the way got several other properties to them directly thus defeating the claim about trusteeship.) There is also nothing to suggest that she would have a life interest in the property, and there is nothing to warrant such inference being drawn, as she was not a spouse of the deceased, so as to have such limitations imputed.”

The Court further observed that; “ It would be myopic for this Court to read the above provision in exclusion of Section 29 (b) which recognizes the place of Susan in the inheritance equation . I find that Susan did not hold the 9 acres of land in Langas within Eldoret in trust for the Applicants and they cannot claim a share of it.

The fact that the transmission has not been concluded does not in any way nullify the distribution. However, I do not think Michael can be introduced into the ownership of the property just by a stroke of pen. Since Susan had other children her survivors must file a succession cause in relation to her estate , and make proposals on the mode of distribution, once transmission is effected.”

15. From the foregoing it is clear that what is common between this instant application and the application dated 8/10/2019 is the issue of ownership and or allocation of the 9 acres of land in Langas within Uasin Gishu County. Who were the litigants? The Applicants and the Respondent herein were the same litigants in the Summons dated 8/10/2019.

In the case stated by the Applicant, one is bound to pause many questions from the contestation pleaded in the affidavit. It is apparent that this probate cause since its initiation before the probate registry on 26.6.1996 parties are still seeking for justice. I have conducted the examination on record



on the earlier cause of action, the notes of evidence and various submissions on the emerging issues. I have gone further to take into account the applicable law on the aspect of the claim and its validity. The record demonstrates that the matter in question allegedly has been dealt with as embodied in the decisions of the court. I have also looked closely at the facts and fundamentals of the earlier proceedings and I am unable to concur with the applicant that there is an estate capable being distributed. First the same principles applies in the instant application. It is settled that parties are not permitted to begin fresh litigations because of new views they may entertain of the law of the case or new versions which they present at to be the proper claim before the new session judge. Indeed if this were to be permitted within the scope of procedural justice litigation will never come to an end. Therefore, rendering the jurisdiction of the court to admit same parties, same subject matter, and same issues which were finally determined in the initial proceedings before the court of concurrent jurisdiction. This is not an appeal nor is it a review for the setting of rights as litigated were to traversed by the respondent and in that case the applicant is bound by the judgement. The rights of the parties ought to rest on that judicial decision of the court. Guided by the principles of review on the findings of this matter or existence of compelling new evidence the Applicant could have also lost going by the affidavit evidence seeking to entitle her 9 acres in the intestate estate of the deceased.

16. The upshot is that is that this instant application is res judicata and an abuse of the Court process. The Chamber Summons dated 27/5/2022 and filed on 14/7/2022 is therefore struck and dismissed with costs to the Respondent.

17. It is so ordered.

**SIGNED, DATED AND DELIVERED ARE ELDORET THIS 25<sup>TH</sup> DAY OF APRIL 2024**

In the Presence of:

.....

**R. NYAKUNDI**

**JUDGE**

