

KENYA / JUDGMENT

In re Estate of Gichuki (Deceased)

[2026] KEHC 12502 (KLR)

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COURT

High Court

BEFORE

DKN Magare

CASE / FILE NUMBER

Succession Cause 1303 of 2011

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REPUBLIC OF KENYA

IN THE HIGH COURT AT NYERI

SUCCESSION CAUSE NO. 1303 OF 2011

IN THE MATTER OF THE ESTATE OF KAMUNGU GICHUKI (DECEASED)

CYRUS MWANGI KAMUNGU..... PETITIONER

VERSUS

CHARLES KINYUA KAGAI.....PROTESTOR

JUDGMENT

1. The Petitioner lodged the Summons for Confirmation of Grant dated 23.5.2022 by which he sought to confirm the grant dated 26.11.2019 and issued to him.
2. According to the Petitioner, the deceased died on 1.12.1992 leaving the 3 beneficiaries stated as follows:
3. Cyrus Mwangi Kamungu
4. Patricia Wamuyu Kamungu
5. Mary Nyambura Mbuthia
6. Under paragraph 5 of the affidavit in support of the confirmation of grant, the Petitioner proposed the only property of the deceased as Githi/Kirerema/259 and shares as follows:
7. Cyrus Mwangi Kamungu - 2/3

8. Patricia Wamuyu Kamungu and Mary Nyambura Mbuthia - 1/3 jointly.
9. The Protestor filed an affidavit of protest dated 4.4.2022 by which it was deposed as follows:
10. The Petitioner had omitted the name of the brother Charles Gichuki Kamungu (deceased) who was the initial Petitioner prior to his demise on 30.8.2014.
11. The said Charles Gichuki Kamungu died after the grant was confirmed on 23.1.2014 to share the deceased's estate Githi/Kirerema/259 as follows:
12. Cyrus Mwangi Kamungu - 1.03 acres
13. Patricia Wamuyu Kamungu - 1.03 acres
14. Charles Kinyua Kagai - 1.03 acres
15. The said Charles Gichuki Kamungu relinquished his share out of the estate to Charles Kinyua Kagai at a consideration of Ksh. 565,000/= as per the agreements dated 25.8.2011, 3.9.2011 and 20.2.2014 and the said share should be granted to Charles Kinyua Kagai.

Evidence

1. PW1 was Charles Kinyua Kagai. He relied on and adopted his affidavit of protest dated 4.8.2022 and witness statement dated 31.5.2017. He produced his list of documents dated 21.6.2017. It was his stated case that the deceased, Charles Gichuki Kamungu, relinquished his share to him, and he is entitled to it based on the agreements he produced in court.
2. On cross-examination, he testified that he was a family member of the deceased. He was a purchaser. It was his testimony that Charles Gichuki Kamungu became administrator on 29.1.2013 and died on 30.8.2014. He sold the land when he was not the administrator. They had not reached the stage of obtaining Land Control Board Consent. He paid Ksh. 565,000/=. The advocate who drew the agreement is since deceased. The certificate of confirmation of grant was revoked.
3. DW1 was Cyrus Mwangi Kamungu. The deceased was his father. He relied on his affidavit in support of confirmation of grant dated 19.9.2022. In cross-examination, he stated that he did not know that his brother Charles Gichuki Kamungu sold the land to the Protestor. The sale agreement showed that the purchase price was paid before confirmation of the grant. The Protestor used to lease the land. He had no lease agreement. He could not remember the date of the lease. His two sisters did not oppose the grant.
4. DW2 was Charles Muriuki Komu. He relied on his witness statement dated 30.10.2023. He was not aware that the protestor bought the land of the deceased Charles Gichuki Kamungu. The Protestor was not allowed to inherit because he was not a member of the deceased's family. They learnt that the late sold part of the land.

5. DW3 was Wangai Gichure. She relied on her witness statement dated 16.10.2023. According to her, Charles Gichuki Kamungu had unlawfully sold a portion of the deceased's land before succession. At the time of sale, no share had been determined through succession.

Submissions

1. The Petitioner filed submissions dated 17.4.2026. He submitted that the Protestor was an intermeddler in the estate of the deceased and had no right of claim in the estate. He cited Section 82 of the Law of Succession Act.
2. It was also submitted that the former administrator had no capacity to sell the property of the deceased under Section 45 of the Law of Succession Act. He cited **Morris Mwiti Mburugu v Dennis Kimanthi Mmburugu (2016) eKLR**.
3. The Petitioner further submitted that the Petitioner was entitled to take out summons for confirmation of grant as he was the administrator. It was submitted that the sale agreements produced had no effect having been entered when the grant had not been confirmed. Reliance was placed on **Re Estate of Paul M'Maria (Deceased) 2017 eKLR**.
4. Based on the above case, it was submitted that the Protestor would not enjoy protection of property under the constitution.
5. The Protestor did not file submissions.

Analysis

1. The Protestor questioned the confirmation of grant. It was his case that the property sought to be distributed, LR No. Githi/Kirerema/259 was sold to him by the previous administrator.
1. The issue for determination is whether the protest should be allowed and the mode of distribution suggested by the Applicant set aside. Section 51 of the [Law of Succession Act] (<http://resolver.caselaw.kenyalaw.org/resolver/akn/ke/act/1972/14>), requires a person seeking to administer the estate of a person who died before 1980 to comply with section 51(2)(g) of the [Law of Succession Act] (<http://resolver.caselaw.kenyalaw.org/resolver/akn/ke/act/1972/14>) and Rule 7(1)(e) of the Probate and Administration Rules, which require disclosure of all the children of the deceased.
2. A perusal of the summons for confirmation of grant dated 3.5.2022 reveals that the Applicant proposed two thirds of the suit property, Githi/Kirerema/259 to devolve to himself with Patricia Wamuyu Kamungu and Mary Nyambura Mbuthia getting the remainder one third.
3. It was common position of the parties that the Protestor was not a beneficiary of the estate of the deceased and was claiming a purchaser's interest. It was the case of the Protestor that his purchaser interest arose from his purchase of the portion that was due to a beneficiary, Charles Gichuki Kamungu. Therefore, the Protestor did not purchase property from the deceased herein. He purchased from a son of the deceased who is also unfortunately deceased and transfer had not happened to divide and register the portion that was said to

have been purchased.

4. That said, it is imperative for the court to discern whether it has jurisdiction to do what the Protestor pleads herein. The jurisdiction of this court is circumscribed under Article 165(3) of the Constitution of Kenya, which posits as follows: -
 - (3) Subject to clause (5), the High Court shall have-
 - (a) unlimited original jurisdiction in criminal and civil matters;
 - (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
 - (c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
1. On the jurisdiction of this court on claims by parties of interest to the estate of the deceased other than beneficiaries and dependant, I do no more than reproduce in detail the disposition by Musyoka J, in re Estate of Andashe Munyeti (Deceased) [2021] eKLR as follows:
5. After a grant is confirmed, and a certificate of confirmation of grant is processed and issued, the next step would be transmission of the property in accordance with the distribution in the certificate of confirmation of grant. Transmission is not a process under the Law of Succession Act, Cap 160, Laws of Kenya. The Law of Succession Act does not provide for it. Indeed, the term transmission is not even mentioned in the Act. It is a process which is provided for in the Land Registration Act, No. 3 of 2012, and the Land Act, No. 6 of 2012. The process has nothing to do with the succession process. The effect of it is that once the court confirms a grant, and issues a certificate of confirmation of grant, its work would be over. The parties ought to move to the next step, of execution of the confirmation orders, which happens at the land registries and at the offices of other land authorities. The application that has been placed before me dwells on matters that have nothing to do with succession, but registration of land, and the parties are better of addressing the issues to the relevant land bodies.

The promulgation of the Constitution, 2010, on 27th August 2010, had one critical consequence, the taking away of jurisdiction from the High Court, with respect to matters relating to land. That comes out very clearly from Articles 162(2) and 165(5) of the Constitution. Parliament passed a law that established the Environment and Land Court. The Land Registration Act and the Land Act, which govern transmission and land registration, carry provisions that make it clear that where disputes or questions or the need for certain actions arise, with respect to issues that are regulated or governed by the two statutes, such as transmission and land registration, then the court to address them is the Environment and Land Court and any subordinate court vested with jurisdiction. These provisions are in sections 2 and 101 of the Land Registration Act and sections 2 and 150 of the Land Act

1. Jurisdiction is everything and without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.
2. Therefore, the Protestor's claim is in the estate of the son of the deceased and not the deceased herein. The court is dealing with the estate of the deceased as proposed in the summons for confirmation of the grant. The court has no jurisdiction to authenticate or invalidate the sale agreements that the Protestor has now produced in court or to distribute the property of the deceased to persons other than the beneficiaries and dependants of the deceased. The Protestor is therefore in the wrong forum that cannot grant him justice. His case is disallowed.
1. I find no ground upon which to refuse to confirm the grant herein. The grounds for revocation or annulment of a grant are set out in Section 76 of the [Law of Succession](<http://resolver.caselaw.kenyalaw.org/resolver/akn/ke/act/1972/14>) as follows:

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (a) That the proceedings to obtain the grant were defective in substance;
 - (b) That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
 - (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
 - (d) That the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - (i) To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) To proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
 - (e) That the grant has become useless and inoperative through subsequent circumstances.
1. Based on the above disposition, the affidavit of protest is not merited. The mode of distribution proposed in the summons for confirmation of grant is right and just and I adopt it, **pari materia**.

2. On costs, an award of costs in this court are governed by Section 27 of the Civil Procedure Act. They are discretionary. The Supreme Court has set forth guiding principles applicable in the exercise of that discretion in the case of **Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others**, SC Petition No. 4 of 2012; [2014] eKLR, as follows: -

“[18] It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, before, during, and subsequent to the actual process of litigation.... Although there is eminent good sense in the basic rule of costs– that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered opinions of this Court in other cases.

1. The court is inclined to find that each party to bear on costs, now that the Protestor may have to still pursue the Petitioner in the correct court.

Determination

1. In the upshot, I make the following orders:
2. The Protest dated 4.8.2022 is not merited and is disallowed.
3. A Certificate of Confirmation of Grant be and is hereby issued in terms of paragraph 5 of the supporting affidavit to the summons for confirmation of grant dated 23.5.2022 and land parcel number No. Githi/Kirerema/259 is distributed as follows:
4. Cyrus Mwangi Kamungu - 2.06 acres (2/3)
5. Patricia Wamuyu Kamungu - 0.515 acres
6. Mary Nyambura Mbuthia - 0.515 acres
7. Transmission by 29/1/2027. Mention on 2/2/2027 before the Deputy Registrar to confirm transmission.
8. Each party to bear their own costs.
9. File is closed.

DELIVERED, DATED and SIGNED at NYERI on this 29th day of July, 2026. Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of: -

Ms. Matata for Kingori for the Respondent

No appearance for the Applicant

Court Assistant – Timothy

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