



REPUBLIC OF KENYA



**Geoffrey v Mwirebua & 2 others (Miscellaneous Succession Application  
E009 of 2024) [2024] KEHC 9567 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9567 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MERU**

**MISCELLANEOUS SUCCESSION APPLICATION E009 OF 2024**

**EM MURIITHI, J**

**JULY 25, 2024**

**IN THE MATTER OF THE ESTATE OF GEOFFREY M'IKIARA M'MWIREBUA (DECEASED)**

**BETWEEN**

**JOSEPH NTEERE GEOFFREY ..... APPLICANT**

**AND**

**SAMSON MWIREBUA ..... 1<sup>ST</sup> RESPONDENT**

**MERU LANDS REGISTRAR ..... 2<sup>ND</sup> RESPONDENT**

**MERU DISTRICT LANDS SURVEYOR ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By a Notice of Motion under certificate of urgency dated 22/3/2024, pursuant to Article 40 of the [Constitution](#), Sections 34, 45, 47 and 83 of the [Law of Succession Act](#), Order 40 Rules 1(a) and 4 of the [Civil Procedure Rules](#), the Applicant seeks that:
  1. Spent
  2. Pending the hearing and determination of this Application, this Honourable Court be pleased to issue a temporary injunction restraining the Respondents, their agents, servants and/or employees from intermeddling and/or interfering, wasting, constructing on or howsoever dealing with parcels of land Nkuene/Upper Mikumbune 1080, 1081 and 1082 which form part of the Deceased's Estate.
  3. This Honorable Court be pleased to order for an audit of the entire Deceased's Estate since his demise to be conducted by a reputable audit firm.
  4. Pending the hearing and determination of this Application, this Honorable Court be pleased to issue an order preserving the Deceased's Estate.



5. This Honorable Court be pleased to place a caution/caveat over Nkuene/Upper Mikumbune1080, 1081 and 1082 pending the hearing and determination of the instant Application.
  6. Pending the hearing and determination of the instant Application, the 1<sup>st</sup> Respondent be ordered to release the Certificates of Title for Nkuene/Upper Mikumbune1080, 1081 and 1082 to the custody of this Honorable Court.
  7. This Honorable Court be pleased to issue an order recalling the titles emanating from subdivision of Nkuene/Upper Mikumbune1080, 1081 and 1082 for proper subdivision among the beneficiaries of the Deceased's Estate as per the mutation forms at the land registry.
  8. The costs of this application be in the cause.
2. The application is based on the grounds on the face of it and supported by an affidavit sworn by the Applicant on even date. The deceased herein and the registered owner of Nkuene/Upper Mikumbune145 passed away on 14/6/2011 leaving behind 8 dependents. Prior to his death, the deceased assigned the 1<sup>st</sup> Respondent the responsibility of subdividing the said land into Nkuene/Upper Mikumbune1077, 1078, 1079, 1080, 1081, 1082 and 1083, and certificates of title were duly issued. The deceased equally subdivided Nkuene/Upper Mikumbune1082 into Nkuene/Upper Mikumbune1135, 1136, 1137, 1138, 1139, 1140 and 1141 before he died. He discovered that the 1<sup>st</sup> Respondent had intermeddled with the deceased estate by building perimeter walls on reserved leave ways on Nkuene/Upper Mikumbune1136 and 1137 and cultivating on the said properties while restricting access to other beneficiaries. When he later conducted an official search over Nkuene/Upper Mikumbune/1135, he discovered that the same had been fraudulently registered in the name of the 1<sup>st</sup> Respondent, in 2015, which is 4 years since the demise of the deceased. Upon carrying out an official search over Nkuene/Upper Mikumbune1082 on 14/10/2022, he discovered that the 1<sup>st</sup> Respondent had, with the help of the 2<sup>nd</sup> Respondent, registered a caution over the entire property. As if that is not enough, the 1<sup>st</sup> Respondent has developed the leave way granted over Nkuene/Mikumbune/1135 and has included it as part of his parcel namely Nkuene/Mikumbune/1083 by using it as a gate to get to the main road contrary to the wishes of the deceased. The 1<sup>st</sup> Respondent has bullishly occupied and constructed on two parcels of land arising from the subdivision on Nkuene/Mikumbune/1082 including Nkuene/Mikumbune/1136 and 1137. He acquired a parcel of land from the deceased upon buying the same and the 1<sup>st</sup> Respondent is in possession of the certificate of titles for Nkuene/Upper Mikumbune1080, 1081 and 1082. This court must restrain the Respondents from further dealing in any way with the said Nkuene/Upper Mikumbune1080, 1081 and 1082 which form part of the deceased estate to avert any prejudice that may befall him and the beneficiaries.
3. The Applicant swore a further replying affidavit on 8/7/2024 in support of his application.
4. The application is opposed by a replying affidavit sworn by the 1<sup>st</sup> Respondent on 21/5/2024. He urges that the deceased subdivided Nkuene/U-pper Mikumbune/145 into Nkuene/U-pper Mikumbune/1077, 1078, 1079, 1080, 1081, 1082 and 1083 during his lifetime. The deceased then transferred Nkuene/U-pper Mikumbune/1077 to Amedeo Rutimi Mwirebua, Nkuene/U-pper Mikumbune/1078 to Joseph Nteere Geoffrey, Nkuene/U-pper Mikumbune/1079 to John Kaburu Geoffrey, Nkuene/U-pper Mikumbune/1083 to him leaving Nkuene/U-pper Mikumbune/1080, 1081 and 1082 untransferred. The deceased subdivided Nkuene/U-pper Mikumbune/1082 into Nkuene/U-pper Mikumbune/1135, 1136, 1137, 1138, 1140 and 1141. The deceased then sold and allotted Nkuene/U-pper Mikumbune/1136 to John Kaburu Geoffrey, Nkuene/U-pper Mikumbune/1140 to Joseph Nteere Geoffrey, Nkuene/U-pper Mikumbune/1141 to Julius Gatobu



Magiri while Nkuene/U-pper Mikumbune/1137, 1138 and 1139 remained in the name of the deceased. The subdivisions of Nkuene/U-pper Mikumbune/145 and 1082 were done by the deceased, and the deceased executed all the transfers to the respective beneficiaries including him. The deceased transferred Nkuene/U-pper Mikumbune/1135 to him during his lifetime but the process of registration of title in his name was delayed at the land's office until 1/4/2015. He denies any collusion between him and the Respondents to forge any mutation forms or interchange plot numbers, as the subdivisions and sharing of the two parcels was done by the deceased without his involvement whatsoever. He denies trespassing, occupying or developing Nkuene/U-pper Mikumbune/1080 and 1081, which are in the name of the deceased to date. All his developments are on Nkuene/U-pper Mikumbune/1135 and 1083 which belong to him and he has titles thereto. He accuses the Applicant of harboring the intention of changing the manner the deceased shared his land so as to take away his developments, which quest is driven by sheer greed. Granting the orders sought will adversely affect the other beneficiaries who are not parties to this suit. He urges the court to dismiss the application, because it is unmerited, incompetent and a gross abuse of the court process.

### Submissions

5. The Applicant urges that the decision in Meru ELC Case No. E010/2023 did not cover the issues raised herein, thus the application is not res judicata and cites *Kennedy Mokua Ongiri v John Nyasende Mosioma & Florence Nyamoita Nyasende* (2022) eKLR. He maintains that he has locus standi to file the application since he is a beneficiary of the deceased with the right to protect his interest in the deceased estate, and cites *Re Estate of Benson Maingi Mulwa* (2021) eKLR and *In the matter of the Estate of David Julius Nturibi M'Ithinji (Deceased)* (2012) eKLR.
6. The 1<sup>st</sup> Respondent urges that the application is res judicata as the Applicant filed a similar application dated 19/5/2023 in Meru ELC Case No. E010/2023 seeking the very same orders sought herein, which application was dismissed by Yano J on 27/9/2023, and cites *Uburu Highway Development Ltd v Central Bank of Kenya, Exchange Bank Ltd (in voluntary liquidation) and Kamlesh Mansukhlal Pattni* (1996) eKLR. He urges that the Applicant lacks locus standi to institute the present application on behalf of the estate of the deceased for the reason that he has not obtained a grant of letters of administration, and cites *Julian Adoyo Ongonga v Francis Kiberenge Abano* Migori Civil Appeal No. 119 of 2015, *Daniel Njuguna Mbugua v Peter Kiarie Njuguna & Others* (2021) eKLR, *Isaya Masira Momanyi v Daniel Omwoyo* (2017) eKLR and *Edema & 2 others v Edema & 5 others* (Miscellaneous Succession Cause E001 of 2022) [2022] KEHC 9960 (KLR) (6 July 2022) (Ruling). He urges that since the demise of the deceased, no succession cause has been filed, and the orders sought herein are incapable of being issued in a vacuum in the absence of an existing suit. He urges that he has demonstrated by evidence that all the properties of the deceased are still intact in his name since there is a restriction over Nkuene/Upper Mikumbune 1080, 1081, 1137, 1138, 1139 and 1140. He urges the court to dismiss the application with costs for being res judicata, fatally defective, incompetent, defective and an abuse of the court process.

### Determination

7. The issues for determination are whether the application is res judicata and whether the Applicant has locus standi.
8. The undisputed facts of this case are that the deceased herein died on 14/6/2011 survived by Francis Nyamu Kiara, Zipporah Gatuiriri Riungu, Esther Kajuju John, Samson Muriungi Mwirebua, John Kaburu Geoffrey, Mary Mwari Muriungi and Joseph Nteere Geoffrey.



9. Section 7 of the *Civil Procedure Act* provides for res judicata as follows:

“7. 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.”

10. The Court of Appeal in *Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others* (2017) eKLR held that:-

“The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and common-sensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute and calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice.”

11. The record shows that the Applicant filed the application dated 19/5/2023 in Meru Environment and Land Court Case No. E010/2023 seeking principally the orders sought herein.

12. The court (C.K Yano J) vide its ruling of 27/9/2023 dealt with the issue of locus standi and held that:

“12. In this case, the dispute is over properties in the name of the applicant’s and 1<sup>st</sup> respondent father who is said to be deceased. In paragraph 2 of the supporting affidavit, the applicant has deponed that the estate of their deceased father is yet to undergo succession. It is trite law that a grant of representation gives one authority to deal with the estate of a deceased person. Whereas in the further affidavit the applicant has deponed that he obtained a limited grant to bring the suit in respect of the estate of the deceased, the alleged limited grant Ad Litem has not been exhibited. I also find it suspicious that the applicant, who initially state that the estate of the deceased had not yet undergone succession proceedings suddenly changes tunes and state that he had obtained a limited grant Ad Litem on 3<sup>rd</sup> April 2023. It is worth noting that this change of tune only occurred after the 1<sup>st</sup> respondent had challenged the locus standi of the applicant. 13. From the material on record, I find that the applicant has not established a prima facie case with a probability of success and I decline to grant the orders of temporary injunction. 14. With regard to the issue whether prayers 4, 5 and 6 in the application are merited, I note that the applicant is also seeking the same prayers in the main suit. I am in agreement with the 1<sup>st</sup> respondent’s submissions that allowing the same will have the effect of determining substantive issues in the main suit. It is trite law that the court should not grant interim relief which amounts to final orders at an interlocutory stage. Besides and having carefully considered the material before me, I cannot safely consider this a clear case that can be decided at once or in a



summary manner. I am therefore not persuaded that the prayers sought should be granted. 15. The upshot is that the notice of motion dated 19<sup>th</sup> May 2023 is devoid of merit and the same is dismissed with costs to the 1<sup>st</sup> respondent.”

13. Dissatisfied with that decision, the Applicant filed the instant application in this court, asking the court to sit on appeal in a decision by the Environment and Land Court.
14. This court respectfully holds that it has no jurisdiction to find fault in a judgment of a court of equal and concurrent jurisdiction.
15. The proper procedure the Applicant would have adopted is to lodge an appeal against the decision of the Environment and Land Court to the Court of Appeal decision, rather than abuse this court’s process by filing the instant application.
16. The Applicant is clearly a stranger to these proceedings as he does not have the locus standi to file the instant application. The certificates of official search on record show that L.R No. Nkuene/Upper Mikumbune/1080, 1081, 1138, 1139 and 1140 are still registered in the name of the deceased.
17. The significance of having locus standi in a matter was discussed by the Supreme Court of Kenya in *Law Society of Kenya v Communications Authority of Kenya* SC Petition No 8 of 2020 [2023] eKLR, as follows:

“Therefore, flowing from the constitutional provisions on the jurisdiction of this court, the definition of ‘a person’ seeking to file an appeal only extends to a party who is aggrieved by a decision issued against him by the Court of Appeal and wishes to prefer an appeal to the Supreme Court. The definition does not open the door for any passer-by who is disgruntled with a decision delivered by the appellate court to approach this court. This also extends to matters relating to public interest. Furthermore, there is difficulty in granting relief at the appellate stage to a party who did not litigate those issues before the superior courts. A person in this context should therefore be a party with locus standi in the matter.”

## **Orders**

18. Accordingly, for the reasons set out above, the Court finds the Applicant’s application dated 22/3/2024 to be without merit and it is dismissed with costs to the 1<sup>st</sup> Respondent.
19. File closed.  
Order accordingly.

**DATED AND DELIVERED ON THIS 25<sup>TH</sup> DAY OF JULY 2024.**

**EDWARD M. MURIITHI**

**JUDGE**

### **Appearances:**

Ms. Karimi for Appellant.

Ms. Gitari and Mr. Kiogora Ngángá for the 1<sup>st</sup> Respondent.

N/A for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent.

