



**In re Estate of Jonah Thumbi (Deceased) (Succession Cause
104 of 2017) [2024] KEHC 10507 (KLR) (28 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10507 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 104 OF 2017
A MSHILA, J
AUGUST 28, 2024
IN THE MATTER OF THE ESTATE OF JONAH THUMBI (DECEASED)**

BETWEEN

KAREN WANJIKU THUMBI APPLICANT

AND

GEORGE MBUTHIA THUMBI 1ST RESPONDENT

PETER MUIGAI THUMBI 2ND RESPONDENT

ESTHER NJERI KAGUNDA 3RD RESPONDENT

EUNICE WANJIRU MWARIA 4TH RESPONDENT

MARY WAIRIMU KARANJA 5TH RESPONDENT

GLADYS NYAMUHU MWARIA 6TH RESPONDENT

RULING

1. Before court is the Summons dated 18th May, 2023 and brought under Sections 49 of the [Probate and Administration Rules](#). The Applicant sought for orders:-
 - a. The Honourable court be pleased to order that the Lands Registrar Kiambu Lands Registry does cancel any and all subdivisions resultant from the subdivision of Land Title Number Komothai/Kiambururu/89 and specifically cancel the subdivision giving rise to and the resultant registers to;
 - 1.1 Land Title Komothai/Kiambururu/822
 - 1.2 Land Title Komothai/Kiambururu/823
 - 1.3 Land Title Komothai/Kiambururu/824



1.4 Land Title Komothai/Kiambururu/825

And does reopen and reinstate the closed register to Land title number Komothai/Kiambururu/89 and does proceed to forthwith issue a Title Deed over the reinstated Land Title number Komothai/Kiambururu/89 in the names of the administrator of the estate of the deceased Jonah Thumbi.

- b. In execution of order (a) above, the Lands Registrar Kiambu Lands Registry be ordered to dispense with the production and surrender of Original title deeds to

2.1 Land Title Komothai/Kiambururu/822

2.2 Land Title Komothai/Kiambururu/823

2.3 Land Title Komothai/Kiambururu/824

2.4 Land Title Komothai/Kiambururu/825

Held by some of the beneficiaries to this estate and proceed with the implementation of the court order without requiring the production and surrender of the said original title deeds.

- c. The Honourable court be pleased to order the Lands Registrar Kiambu to reaccept the transfer to the Personal representatives as the executor/Administrator had prepared Form LRA 30 in respect to Land title number Komothai/Kiambururu/89 and land title number Komothai/Kiambururu/T.161/18 and register the same in the register to Land Title Number Komothai/Kiambururu/89 and Komothai/Kiambururu T161/18.
- d. The Honourable court be pleased to order that the county government of Kiambu and the Kiambu Lands registrar does cancel, vacate and annul any subdivisions to land title number Komothai/Kiambururu/T.161/18 and does reinstate the deceased proprietor's name in the register to the said property and does issue the lease and certificate of lease thereof in the names of the Administrators of the estate of the deceased herein.
- e. The Honourable court be pleased to order that the County Lands Surveyor Kiambu County be ordered to subdivide Land title number Komothai/Kiambururu/89 into six equal portions or such other number of portions in conformity with the certificate of confirmation of grant dated 5th March, 2020 issued in this matter.
- f. The Honourable court does issue an order directing the Officer Commanding Githunguri/Kigumo Police Stations to provide security to the Surveyor undertaking the survey of Title Number Komothai/Kiambururu/89 and ensure that peace is maintained during the exercise.

2. Karen Wanjjiku Thumbi in her supporting affidavit deposed that she is a beneficiary of the deceased's estate. On 27/07/2018, the court revoked the grant and proceeded to order that property being Ruiru Town/70 be sold and the proceeds to be distributed amongst the beneficiaries, that Komothai/Kiambururu/T.161/18 be distributed six ways amongst the beneficiaries of the estate and that the property being Komothai/Kiambururu/89 be subdivided six ways amongst the beneficiaries of the estate thereafter the court confirmed the grant and issued a certificate of confirmation of grant as provided in the ruling dated 5th March, 2020. She also deposed that a consent was recorded that Komothai/Kambururu/T 161/18 is too small to be subdivided as such it should be valued and whoever wishes to keep their share to buy off the share of the other beneficiaries and/or the same to be sold and the proceeds shared six ways amongst the beneficiaries. This caused the certificate of the confirmation of grant to be amended to the effect that the said property was to be sold. From all the orders of the court, only Ruiru Town/70 has been sold and the proceeds distributed. In regard



to Komothai/Kiambururu/89 the Registrar failed to effect transfer as the register had been closed for subdivision numbers 822-825 registered in the names of the 1st, 2nd, 3rd and 4th Respondents respectively. For Kiambururu T 161/18 the Registrar stated that the lease had expired. She stated that the Registrar requires a court order to cancel the subdivision and that the county government needs to extend the lease. She contended that vide the ruling dated 27/7/2018, Komothai/Kiambururu/89 was amalgamated as one to be shared equally in six ways as such they are unable to implement the said order. Further, she averred that the county government of Kiambu has extended the lease for plot T 161/18 and only an order of the court is pending for its implementation. The beneficiaries insist they want a government surveyor for subdivision of Komothai/Kiambururu/89. In the circumstances, the courts intervention is needed to finalize the matter herein.

3. Esther Njeri Kagunda the 3rd Respondent swore her replying affidavit dated 7th June, 2023 on her own behalf and on behalf of the 4th, 5th and 6th Respondents. She averred that they have complied with the orders of the court dated 5th March, 2020 and the consent of 31/03/2020. George Mbutia Thumbi was not paying rates for Komothai/Kiambururu/T161/18B as such the lease expired causing the registration to be rejected. Karen Wanjiku should be provided by Peter Muigai and George Mbutia as such Komothai/Kiambururu/822 and 823 should be subdivided further. She presented a proposal that they were agreeable to in regard to plot no. 18B and Komothai /Kiambururu/822 and 823. Amalgamation of Komothai/Kiambururu 824 and 825 will compound a dispute that has already been resolved as there are permanent structures thereon. Lastly Peter Muigai and George Mbutia should provide for Karen Wanjiku so as to resolve this matter.
4. Eunice Wanjiru Mwaria in her replying affidavit sworn on 7th July, 2023. She averred that Esther Njeri reached out to Mary Wairimu, Eunice Wanjiru and Gladys Nyamahu and purchased their shares of Komothai/Kiambururu/T.161. With regard to Komothai/Kiambururu/89 the same was divided into four equal portions in the names of George Mbutia, Peter Muigai, Esther Njeri and Mary Wairimu leaving out other beneficiaries. Karen Wanjiku's share can only be derived from Komothai/Kiambururu/822 and 823. She joined issues with the proposal as provided in the affidavit dated 7/6/2023.
5. The Applicant and the Respondents failed to file written submissions but wished to rely on the Summons and their replying affidavits respectively.

Issues for Determination

6. After reading the application and the parties affidavits this court has framed the following issues for determination;
 - i. Whether this court has jurisdiction to make orders for cancellation of titles.
 - (ii) Whether to grant police security to the County Land Surveyor Kiambu to execute his duties

Analysis

Whether this court has jurisdiction to make orders for cancellation of titles.

7. The applicable law is found at Sections 47 and 73 of the *Law of Succession Act* which gives the Probate court inherent powers necessary to meet the ends of justice and to prevent abuse of the court process; There are already orders in place revoking the Grant and for the title Deeds to revert back to the names of the deceased person; which in essence amounts to cancellation of the title deeds and the only issue pending is implementation.



8. Starting with Komothai/Kiambururu/T.161/18 the Applicant seeks an order that the county government of Kiambu and the Kiambu Lands Registrar do cancel, vacate and annul any subdivisions to land title number Komothai/Kiambururu/T.161/18 and reinstates the deceased proprietor's name in the register to the said property and then issues the lease and certificate of lease thereof in the names of the Administrators of the estate of the deceased herein.
9. From the affidavits it is noted that the county government has extended the expired lease but has put conditions in place which are found to be very reasonable in that it only requires the full payment of outstanding rates touching on Komothai/ Kiambururu/T.161/18B before it fully complies; The Administrator is therefore hereby directed to pay any outstanding rates due to the County Government from the estate of the deceased for and on behalf of the defaulting beneficiary. Thereafter upon the sale of Komothai/ Kiambururu/T.161/18 such amounts can be deducted from the proceeds of the defaulting beneficiary's share; the said defaulting beneficiary being George Mbutia Thumbi;

Whether to grant police security to the County Lands Surveyor to execute his duties

10. With regard to Komothai/Kiambururu/89 the Applicant seeks for the above order but has not demonstrated to the court that such a request was ever made to the relevant police station and the request was then denied; Further the prayer sought is unsupported by any affidavit or report by the Surveyor on the visits or attempts made to the land for the purpose of carrying out the assignment and that he was unable to carry out the assignment due to threats made; and if any threats were occasioned then were these incident(s) ever reported to the Githunguri/Kigumo Police Stations; the OB extract if any ought to have been annexed to the affidavit or report.
11. In the absence of any material placed before this court to support the request this court is not satisfied that there any bona fide reasons to grant the surveyor police security for purposes of carrying out the assignment.

Findings and Determination

12. For the forgoing reasons this court makes the following findings and determinations
 - i. This court finds that it has jurisdiction to hear this application.
 - ii. The application for police security for the surveyor is not merited.
 - iii. This court shall make final orders upon compliance
 - iv. Mention on 27/11/2024 for compliance.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 28TH DAY OF AUGUST, 2024.

A. MSHILA

JUDGE

In the presence of:-

Mourice – Court Assistant

Ms. Kisotu holding brief for Makumi for 3rd and 5th Respondents

No appearance by Applicants

