



**In re Estate of Stanley Muchiri (Deceased) (Succession Cause
341 of 2010) [2024] KEHC 10472 (KLR) (26 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10472 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
SUCCESSION CAUSE 341 OF 2010
LM NJUGUNA, J
AUGUST 26, 2024**

IN THE MATTER OF THE ESTATE OF STANLEY MUCHIRI (DECEASED)

BETWEEN

AGNES WAMBUI MUCHIRI APPLICANT

AND

TERESIA KAARI NJERU 1ST RESPONDENT

EVANGELINE KAARI MUGO 2ND RESPONDENT

RULING

1. The applicant filed summons dated 11th January 2024 premised on the grounds on its face and in the supporting affidavit, seeking orders that:
 - 1) The caution lodged on land parcel number Kagaari/Kanja/2488 by the 1st respondent be lifted;
 - 2) The restriction lodged on land parcel number Kagaari/Kanja/2488 by the 2nd respondent be lifted; and
 - 3) The costs of the application be provided for.
2. It was the applicant's case that the encumbrances were placed on the said property on the strength of an application for revocation of grant, which was subsequently withdrawn. That there is no legal basis for continuation of the encumbrances which are hindering the applicant from using the land.
3. The respondents filed a replying affidavit in which they opposed the application, stating that the applicant's husband who is the deceased herein obtained the land from the respondents' father through fraud. That the prayers sought herein should be sought from the Environment and Land Court and that this court does not have jurisdiction to determine the application. That parcel number Kagaari/Kanja/1321 has never been subdivided and the family of Munene Mathua occupies it wholly. They



deposed that the registration of Kagaari/Kanja/2488 was procured mysteriously and fraudulently. The 2nd respondent also contended that she was wrongly enjoined in the application.

4. The application was canvassed by way of written submissions.
5. The applicant submitted that she is the registered owner of the land after it was transmitted to her following the death of her husband who is the deceased herein through succession cause no. 341 of 2010. That after confirmation of the grant, the 1st respondent moved to revoke the grant on the basis that parcel no. Kagaari/Kanja/2488 is not part of the estate of the deceased and she encumbered the land. That the said application was withdrawn and so the encumbrances are no longer grounded in law. She urged the court to grant her the prayers sought.
6. In their submissions, the respondents relied on section 13 of the *Environment and Land Court Act* and section 78 of the *Land Registration Act* and stated that this court's jurisdiction is limited to family matters and that it cannot issue the orders sought for. They also submitted that the 2nd respondent's inclusion in the application falls afoul of Order 1 Rule 10 of the *Civil Procedure Rules*.
7. The issue for determination is whether the orders sought should be granted.
8. The respondents have challenged the jurisdiction of this court to consider the application herein. They stated that the applicant should approach the ELC for the orders sought. The interests of the respondents in the property arise from their interests as alleged beneficiaries and it is this interest that motivated them to seek revocation of the grant but the application was withdrawn. In other words, the encumbrances arise from a succession cause. This means that the succession court has the relevant jurisdiction to lift the encumbrances because in doing so, the beneficiaries will be aided to take up their inheritance without undue delay.
9. In *Re Estate of Alice Mumbua Mutua (deceased)* (2017) eKLR the Judge considered circumstances when a case can be heard as a succession cause or when it can be heard in other courts with concurrent jurisdiction like the ELC. The Judge said;

“The Law of Succession Act, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets. 27. Disputes of course do arise in the process. The provisions of the Law of Succession Act and the Probate and Administration Rules are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the Law of Succession Act and the Probate and Administration Rules. Such have to be resolved through the structures created by the Civil Procedure Act and Rules, which have elaborate rules on suits by and against executors and administrators.”
10. According to the record, on 13th February 2023, the summons for revocation dated 26th May 2014 was marked as withdrawn. The applicant herein stated that she would like the encumbrances placed by the respondents on the subject land to be removed/lifted. The certificate of official search dated 03rd November 2023 reveals that there is indeed a caution placed at the behest of the 1st respondent and a restriction placed as per the letter by Guantai & Associates on behalf of the 2nd respondent. This means



that the 2nd respondent is not improperly enjoined in the proceedings since she is one of the people who have encumbered the suit land.

11. In the circumstances, it is necessary for the court to grant the orders prayed for, to enable the applicant utilize her land. Therefore, I find that the application has merit and it is hereby allowed. The following orders shall issue:

1. The Land Registrar Embu is hereby ordered to lift the caution placed on land parcel number Kagaari/Kanja/2488 by the Teresia Kaari Njeru;
2. The Land Registrar Embu is hereby ordered to lift the restriction placed on land parcel number Kagaari/Kanja/2488 through a letter by Guantai & Associates on behalf of Evangeline Kaari Mugo; and
3. There shall be no order as to costs.

12. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 26TH DAY OF AUGUST, 2024.

L. NJUGUNA

JUDGE

..... for the Applicant

..... for the 1st Respondent

..... for the 2nd Respondent

