



**In re Estate of Nzoka Musavi (Deceased) (Succession Cause  
59 of 2004) [2024] KEHC 13745 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13745 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
SUCCESSION CAUSE 59 OF 2004**

**MW MUIGAI, J**

**OCTOBER 31, 2024**

**IN THE MATTER OF THE ESTATE OF NZOKA MUSAVI (DECEASED)**

**BETWEEN**

**NELSON KIKUVI NZOKA ..... 1<sup>ST</sup> PETITIONER**

**SAMUEL MUSYOKI NZOKA ..... 2<sup>ND</sup> PETITIONER**

**LUISA MWIKALI MUOKI ..... 3<sup>RD</sup> PETITIONER**

**AND**

**MARGARET KANINI MUTISYA A.K.A. MARGARET KANINI**

**MUTUA ..... RESPONDENT**

**RULING**

1. The deceased herein died on 23.11.1974.
2. The Petition for letters of administration was filed on 3.03.2004 and only asset listed to deceased's name was stated as Kangundo/Matetani/33, hereinafter referred to as "the estate property".
3. The deceased was said to be survived by;
  - a. Ndungwa Nzoka Wife
  - b. Nelson Kikuvu Nzoka Adult
  - c. Samuel Musyoki Nzoka Adult
  - d. Athanus Mwaka Nzoka Adult
  - e. Peter Munuve Nzoka Adult
  - f. Mbithi Nzoka (deceased)Wife Monicah Mwikali Mbithi



- g. Josphat Ntheketha Nzoka (deceased) Wife Mwikali Ntheketha
  - h. Wambua Nzoka (deceased)
  - i. Kioko Nzoka (deceased) wife Ngii Kioko
  - j. Muoki Nzoka (deceased) wife Luis Muoki
  - k. Masila Nzoka (deceased) wife Salome Nzisa Masila
  - l. Mumbua Nzoka Adult
  - m. Kalondu Nzoka Adult
  - n. Wavinya Nzoka Adult
  - o. Katito Nzoka Adult
4. The Grant of Letters of Administration Intestate was issued on 28.04.2004 to Ndungwa Nzoka, Nelson Kikui Nzoka and Samuel Musyoki Nzoka
  5. The Summons for confirmation of grant was filed on 11.01.2005
  6. On 5.12.2006, a chamber summons application was filed seeking to substitute Ndungwa Nzoka who died with Pete Munuve Nzoka.
  7. Peter Munuve Mulwa died on 28.03.2008.
  8. A Chamber Summons was filed seeking to substitute Peter Munuve with Luis Muoki and a rectified grant of letters of administration of letters intestate.
  9. A rectified certificate of confirmation of grant was issued on 16.11.2012.
  10. Summons for revocation or annulment of grant was filed on 01.03.2021
  11. Vide Summons dated 24.11.2023 under Section 47 of the *Law of Succession Act* and Rule 49 of the Probate and Administration Rules, the 3<sup>rd</sup> Petitioner seeking the following orders;
    - a. Spent
    - b. Spent
    - c. The Respondent (Margaret Kanini Mutisya) her agents and/or servants be restrained by an order of injunction from using in any manner whatsoever parcel of land known as land title Kangundo/Matetani/33 pending the determination of this application.
    - d. That the Respondent be penalized, as the court may deem fit for intermeddling with the estate of the deceased.
    - e. The OCS Kangundo police station be directed to enforce the orders made by this Court.
    - f. The costs of this Application be awarded to the Applicant/3<sup>rd</sup> Petitioner.
  12. The Summons is supported by the affidavit of Luisa Mwikali Muoki who deposed that after issuance of the rectified certificate of confirmation of grant dated 16.11.2012, the estate property being Kangundo/Matetani/33 was transferred to the Petitioners as trustees for the beneficiaries on 9.01.2014. she stated that in 2020, the Respondent filed Kangundo Magistrate's Court ELC MISC.



Application No 12 of 2020 against her and the 1<sup>st</sup> Petitioner claiming ownership of the estate property and the same was dismissed on 02.02.2021.

13. That she filed an application before this court claiming ownership vide an application dated 01.03.2021 but the same was dismissed in a ruling dated 26.10.2022. Subsequently, the Respondent went back to Kangundo Magistrate court where she filed an application which was dismissed vide a ruling dated 14.11.2023. It was deposed that the Respondent after the ruling was delivered took possession of the estate property forcefully and has dug trenches which have turned into water ways causing massive soil erosion. That the Respondent has cultivated beans and maize on the whole parcel of land and are causing damage to the land.

### **Replying Affidavit**

14. The Respondent filed a replying affidavit in opposition of the Summons on 9.02.2024 and stated that the Petitioners have not disclosed that she is an interested party having filed summons for revocation of grant on 1.03.2021 and that the same was allowed and rectified grant of letters of administration issued on 16.11.2012, dated 11.3.2013 together with a rectified certificate of confirmation of grant issued on the same date. That there was an order that the estate property be reverted to the names of the deceased.
15. The Respondent stated that she was awarded the property vide judgment dated 7.12.2004 by the then Kangundo Land Disputes Tribunal Case no 14 of 2003. That the 1<sup>st</sup> Applicant and Peter Munuve Nzoka- deceased purported to appeal out of time in Eastern Provincial Land Disputes Appeal Committee Case No 14 Of 2005 but the same was never heard until the Tribunals were disbanded. She stated that the purpose of Kangundo Misc. 12 of 2020 was to have judgment entered and decree issued in terms of the judgment and order of the Land Disputes Tribunal Kangundo but the subordinate Court issued a Ruling that adopting the same while the confirmation of grant was in force would amount to overturning the decision of a superior court.
16. She stated that it is at this point that she moved to this court to have the grant of letters of administration and confirmed grant revoked and the estate property revert back to the deceased herein. Upon being successful, she went back to the Subordinate Court but the court was of the view that the matter should be handled by this court. She contended that this does not invalidate the Tribunal award but forestalls the execution thereof. It was contended that the 3<sup>rd</sup> Applicant admitted that the Respondent is entitled to the estate property in her replying affidavit sworn on 14.09.2023 in the Subordinate Court.
17. The Respondent stated that Nelson Kikui Nzoka died on 3.8.2021 therefore has no capacity to apply together with the 2<sup>nd</sup> Petitioner who is also deceased.
18. The Summons were canvassed by way of written submissions.

### **Submissions**

#### **Applicant's Submissions**

19. The Applicant relied on Section 82 (b) (iii) and stated that the deceased herein died on 23.11.1974 and the grant was confirmed on 16.11.2012 whereas the Respondent alleges that her husband purchased the subject land in 1981. It was contended that the transaction was null and void by operation of the law.
20. It was submitted that the Respondent had admitted to using the parcel of land in her Replying affidavit and consequently intermeddled with the estate of the deceased. The Court was urged to direct the



OCS Kangundo Police station to conduct investigations with a view of charging the Respondent with the offence of intermeddling under Section 45 (2) (a) of the *Law of Succession Act*.

### Respondent's Submissions

21. The Respondent filed submissions on 22.06.2024 and relied on the averments in its Replying affidavit. She stated that upon the death of her husband, the Applicants and their family started attempting to unlawfully deny the Respondent of the use of the suit land but she declined to heed to their threats seeking help of local administration armed with the Tribunal judgment and Court Rulings. The Court was urged to dismiss the summons with costs.

### Determination

22. I have considered the Court record, the Summons, Replying Affidavit and the submissions on record and note that on 28.11.2023, this Court granted prayer b and c of the Summons under Certificate of Urgency filed on 24/11/2023 and thus find that the issue for determination is whether the Respondent is an intermeddler or not. Determination of this issue will determine the next cause of action by this Court.
23. Section 45 of the *Law of Succession Act* provides as follows;
- (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
  - (2) Any person who contravenes the provisions of this section shall—
    - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
    - (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration

24. In *Veronica Njoki Wakagoto (Deceased) [2013] eKLR* the Court held;

“The effect of [section 45]...is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorised to do so by the Law. Such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”

25. In *re Estate of Edward Mutuku Mwando (Deceased) [2022] eKLR* the Court observed;

“I also agree with the position in *Benson Mutuma Muriungi vs. C.E.O Kenya Police Sacco & Anor (2016) eKLR* and *re Estate of M’Ngarithi M’Miriti [2017] eKLR* that:

“Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law



or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the Law of Succession Act. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the Law of Succession Act. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person.”

26. The deceased herein died on 23.11.1974 and at the time of his death, the estate property, Kangundo/Matetani/33 was registered in his name.

27. The Ruling dated 2.02.2021 by Hon. M. Opanga in Kangundo ELC Miscellaneous no 12 of 2020 in which the court dismissed the Application filed by Margaret Kanini Mutisya and stated as follows;

“from the pleadings and submissions, I find that It is not in dispute that the applicant was awarded parcel of land known as Kangundo/Matetani/33 vide judgment dated 7/8/2004 in Kangundo Land Disputes Tribunal Case no 14 of 2003. It is not in dispute that the respondent filed an appeal out of time to the then Eastern Provincial Land Disputes Appeal Committee Vide Case Number 14 of 2005 but did not pursue the appeal until the tribunals were disbanded. It is not in dispute that the respondents secretly filed succession cause no 59 of 2004 at Machakos High Court in the year 2012 wherein grant of letters of administration were issued to the Respondents and a certificate of confirmation of grant dated 11/3/2013 issued to them. In the said succession cause the estate of the late Nzoka Musavi was distributed to the Respondents herein and one Samuel Musyoki Nzoka to hold in trust for themselves and for other beneficiaries namely Athanus Mwaka Nzoka, Monica Mwikali Mbithi, Ngii Kioko and Salome Nzisa.....in the circumstance the proper recourse in my view would be for the applicant to make an application for revocation of grant before the court that dealt with the succession cause on the grounds that the Respondent’s failed to disclose the existence of the liability to the estate in terms of the tribunals judgment.”

28. Hon. Justice G. V. Odunga, (as he then was) in Ruling dated 26.01.2022 revoked the grant issued on 01.03.2021 and stated as follows;

“ 24. Based on the foregoing, I find that the Applicant’s interest in the suit property ought to have been disclosed. The failure on the part of the Respondents to do so fell afoul of section 76 of the Law of Succession Act.

25. Accordingly, I find merit in the Summons for Revocation of or Annulment of Grant dated 1st March, 2021 and hereby revoke and annul HCSC 59 of 2004 Page 14 the rectified grant of letters of administration issued herein on 16th November, 2012 and dated 11th March, 2013 together with the rectified



certificate of confirmation of grant also issued herein on 16th November, 2012 in so far as they relate to land parcel no. Kangundo/Matetani/

33. Accordingly, I direct that the registration of the same be reverted to the name of the deceased Nzoka Musavi. If and when Summons are taken out to confirm the Grant, the Applicant shall be served in order for her to protect her interest in the suit property.”
29. The consequence of this order was that the estate property would revert back to Nzoka Masavi the deceased herein and not that the Respondent would be declared the owner of the estate property. What ought to happen is that fresh Summons for Confirmation of Grant ought to be taken out. Therein the interest of the Respondent would be taken care of. Any act on the estate property before the grant is confirmed is indeed intermeddling by any of the parties, purchaser or beneficiary.
30. This was also stated by the Court in Kangundo Misc. ELC Case No 12 of 2020. The same Court also indicates that it does not have jurisdiction to quash the decision of the Tribunal as that power lies with the High Court in Judicial Review.
31. From the record, the Respondent does not deny digging trenches or planting maize and beans. She has asked the court to vacate the temporary orders of injunction so that she can be able to harvest her beans. Unfortunately, such acts amount to intermeddling as the suit property is estate property and there is no confirmed grant.
32. In the case of John Marete Kirema & Another v Gladys Karimi Muthamia & 3 Others (2013)eKLR Makau J held that:
- “My understanding of section 45 of the *Law of Succession Act* is that when the court finds the deceased property is in danger of being intermeddled with it can on its own motion issue appropriate orders to preserve the deceased estate pending regularization of any process that needs to be regularized...”
33. In the end, I order as follows;
- a. An order of injunction is hereby issued restraining the Respondent, agents and/or servants from using in any manner whatsoever parcel of land known as land title Kangundo/Matetani/33 pending determination of the Succession Cause through Summons for Confirmation of Grant to be filed by the Parties/Family within 90 days hereof and the Respondent to confirm/prove her claim to the said property and/or produce the Tribunal Proceedings & Judgment for this Court to consider if sufficient proof of purchase and therefore creditor of the estate of the deceased or not or move to Environment and Land Court (ELC).
- b. Each party will bear its own costs.

It is so ordered.

**RULING DELIVERED SIGNED & DATED IN OPEN COURT ON 31/10/2024 IN MACHAKOS HIGH COURT (VIRTUAL/PHYSICAL CONFERENCE)**

**M.W. MUIGAI**

**JUDGE**

