



**In re Estate of Silas Kibuthu Mwangi (Deceased) (Succession Cause 118 of 2015) [2024] KEHC 13262 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13262 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 118 OF 2015  
HI ONG'UDI, J  
OCTOBER 29, 2024  
IN THE MATTER OF THE ESTATE OF SILAS KIBUTHU MWANGI (DECEASED)**

**BETWEEN**

**ELIZABETH WANGUI KIBUTHU ..... APPLICANT**

**AND**

**ZIPPORAH WANJIRU KARANJA ..... 1<sup>ST</sup> ADMINISTRATOR**

**JEREMIAH KARANJA KIBUTHU ..... 2<sup>ND</sup> ADMINISTRATOR**

**RULING**

1. In the Notice Motion dated 4<sup>th</sup> October, 2023 the applicant seeks the following orders;
  - i. Spent.
  - ii. That the Land Registrar, Nakuru be directed to dispense with the production of the original titles (sic) in respect to parcel of land known as Maela/Ndabibi Block 2/773 in effecting transfer of the suit property to the applicant herein as its proprietor under the supervision of the Court.
  - iii. That the orders sought be granted in the interests of equity and justice.
2. The application is premised on the following grounds;
  - i. That the applicant instituted this suit as a beneficiary in the Estate of Silas Kibuthi Mwangi deceased.
  - ii. This honourable Court delivered its ruling dated 18<sup>th</sup> April, 2023 on the beneficiary's application dated 25<sup>th</sup> November, 2022.



- iii. In the said ruling, the Court authorized title administrators /respondents herein to release the original title deed for Maela/Ndabibi Block 2/773, copies of their identification cards, Kenya Revenue Authority Pin certificates and passport photographs to the applicant for purpose of execution of the orders issued on 8<sup>th</sup> May, 2019.
  - iv. Secondly, that the Deputy Registrar executes the sale agreement(s), completion/transfer documents on behalf of the administrators/respondents who have declined to do so.
  - v. Further, that upon execution by the Deputy Registrar of Order 2 and 3 above, the documents be deemed as sufficient instruments for completion/transfer documents. However, registration of the Title in the names of the applicant has been rendered impossible since the respondents have totally refused to sign the transfer forms to effect the transfer.
  - vi. There is a deadlock in the process of transferring the suit property where the respondents herein have refused to sign the transfer forms and whose whereabouts are unknown.
  - vii. The applicant is apprehensive that the respondent herein might use ingenious methods to circumvent the Decree arising from the judgment herein.
  - viii. That it is the refusal of the respondent in signing the transfer forms of the properties aforementioned that has necessitated filing of this application.
  - ix. That given the time when parties herein recorded the consent in Court on 13<sup>th</sup> July 2017 it is just and fair that the application herein be dealt with instantly so that the Court can focus on other matters.
3. The respondents filed a replying affidavit dated 4<sup>th</sup> December 2023 sworn by the 1<sup>st</sup> respondent. She averred that they recorded a consent in Court on the 8<sup>th</sup> May 2019 whereby the caution filed by the applicant was to be withdrawn so that they would be in a better position to sell the land. Further, that the person in occupation of the land was to vacate it and the same sold to the highest bidder and the proceeds divided equally between the petitioner and the applicant so that the matter could be marked as settled.
  4. She further averred that the applicant filed an application dated 27<sup>th</sup> April, 2021 which was heard and a Ruling delivered by H. K. Chemitei J on the 16<sup>th</sup> December 2021 dismissing the same with costs. She added that at no time had she been served by the applicant with the documents stated in her affidavit and the decree as purported in the supporting affidavit sworn on 4<sup>th</sup> October 2023. She denied any knowledge of any order issued on 3<sup>rd</sup> May, 2023.
  5. The applicant filed a supplementary affidavit on 23<sup>rd</sup> July 2024 in which she deposed that a perusal of the contents of the replying affidavit did not reveal any objection to her application. Further, that the application dated 25<sup>th</sup> November 2022 and hearing notice for 18<sup>th</sup> April, 2023 thereof was properly and duly served upon the respondents herein as can be seen from the aforementioned affidavit of service which the court considered before giving directions on the said 18<sup>th</sup> April 2024. She added that the refusal by the respondents to sign the transfer forms of the properties aforementioned had necessitated the filing of the present application.
  6. Both applications were canvassed by way of written submissions.

### **Applicant's submissions.**

7. These were filed by Mirungi Kariuki & Company Advocates on 17<sup>th</sup> April, 2024. Counsel submitted that court orders must be complied with no matter the litigant's personal view on the court's directive.



Further, that no reason had been advanced by the respondents as to why they failed to attend court on the 18<sup>th</sup> April 2023 when the orders were issued necessitating filing of the instant application.

8. He placed reliance on *MN v TAN & Another* [2015] eKLR quoted in the case of *JMR v RNM* [2022] eKLR where the court held as follows:

“...A valid court order has to be obeyed or complied with regardless of how aggrieved a party is about it. The order has the force of law. It is not a mere wish or proposition. Disobedience or non-compliance with it attracts severe consequences. It would appear to me that the appellant believes that the orders of 30<sup>th</sup> July 2013 are not valid, and has explained why he has chosen to disregard or disobey them. Yet he is bound to obey the orders for as long as they are still in force. He has no choice; he cannot decide when and how to obey or comply with them.”

He urged the court to allow the application as prayed.

### **Respondent’s submissions**

9. These were filed by Oburu Mbeche & Company Advocates on 30<sup>th</sup> May, 2024. Counsel submitted that court orders are never issued in vain and that the same must be obeyed unless set aside. However, that the exception to this rule was that Court orders to be enforced must be served on the person against whom the orders were issued. He placed reliance on the case of *Kiwi Ltd v Reef Hotels Ltd, Mombasa HCMA No.616 of 2006*, where the Court held that:

“As a general rule, no order of Court requiring a person to do or abstain from doing any act maybe enforced unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question.”

10. Counsel submitted further that at no particular time was the Court order served on the person of the respondent herein or to her advocates on record, either via physical address or via email address or through any other form of service. Further, that the evidence on record clearly showed that no affidavit of service of the Court order was ever filed, clearly cementing the respondent’s case. Therefore, that failure to serve the respondent was unprocedural.

11. The court’s attention was drawn to the case of *Elizabeth Waruguru v Moses Kanyingi* [2014] eKLR where the court held as follows;

The affidavit of service does not state that the applicant was served with the order of the court. This court finds that there is no evidence that the said order was served. Moreover there is no evidence of a penal notice....This court finds that failure to serve the advocate of the defendant/applicant was unprocedural and denied the applicant the right to representation. The court proceeded with the matter on the assumption that the defendants advocate had been served hence committing a mistake on the face of record. I do find that the said mistake is sufficient reason to review the order made on 9/6/2014.”

12. He further submitted that failure to comply with the Court order as alleged by the applicant herein bordered on contempt of Court. That the threshold of proof of willful disobedience of a Court order was that the alleged contemnor must be proven to have knowledge of the Court order. He placed reliance on the case of *Simmers Plaza Ltd v NBK* [2015] eKLR and *Mohamed v Bakari & 2 others* [2005] 2KLR.



## Analysis and Determination

13. I have considered the application, the affidavits and the submissions by both parties. I opine that the issue for determination is whether the application dated 4<sup>th</sup> October, 2023 is merited.
14. From the perusal of the court's record it is evident that this court on 18<sup>th</sup> April, 2023 allowed the applicant's application dated 25<sup>th</sup> November 2023 as prayed. The orders sought therein were as follows;
- i. That this honorable court be pleased to order Zipporah Wanjiro Karanja and Jeremiah Karanja Kibuthu, the Administrators, to release the original title deed for Maela /Ndabibi Block 2/773, copies of their identification cards, Kenya revenue authority pin certificates and passport photographs to the Applicant for purposes of execution of the orders issued on 8<sup>th</sup> May, 2019.
  - ii. That this honorable court through the Deputy Registrar executes the sale agreement(s), completion/transfer documents on behalf of the Administrators/Respondents who have declined to do so.
  - iii. That upon execution by the Deputy Registrar of this Honorable court in order (2) above the same be deemed as sufficient instruments for completion /transfer documents.
  - iv. That this honourable Court be place to give orders as to the compliance of confirmation of grant dated 8<sup>th</sup> May, 2019.
  - v. That the cost this application be provided for.
15. There is no doubt that the orders issued by this court on 18<sup>th</sup> April, 2023 were in respect of the property known as Maela /Ndabibi Block 2/773 which is the subject of the present application by the applicant. The respondents have failed to comply with the said orders prompting the applicant to file the instant application seeking the court's intervention.
16. The respondents have argued that they were not served with the said orders and were therefore not aware of their existence. In the consent entered into by the parties' advocates on 8<sup>th</sup> May 2019 on behalf of the parties herein, the suit property was be sold to the highest bidder. This consent order was not complied with on the part of the respondents prompting the summons dated 25<sup>th</sup> November 2022 by the applicant. There is no dispute that the orders issued by this court on 8<sup>th</sup> May 2019 and 18<sup>th</sup> April 2023 have never been complied with.
17. In the case of Simon Ng'ang'a Njoroge v Daniel Kinyua Mwangi [2016] eKLR the court observed as follows:
- “I think we are dealing with a unique circumstance where a person who has lost a case, now wants to make it difficult for the successful party to procure registration in his name.
- I think it is only fair that I order the Land Registrar to dispense with the production of the original certificate before proceeding to register the plaintiff as proprietor of the suit property”.
18. Section 1A of the [Civil Procedure Act](#) provides as follows:
- 1A. Objective of Act
- (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.



- (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
- (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.

Section 1B (1) of the [Civil Procedure Act](#) provides as follows;

1B. Duty of Court

- (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims-
  - (a) the just determination of the proceedings;
  - (b) the efficient disposal of the business of the Court;
  - (c) the efficient use of the available judicial and administrative resources;
  - (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
  - (e) the use of suitable technology.

19. Section 3A of the [Civil Procedure Act](#) provides as follows:

“Saving of inherent powers of court.

Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

20. In the case of *Stephen Gathua Kimani v Nancy Wanjira Waruingi T/A Providence Auctioneers* [2016] eKLR it was stated as follows in respect of the overriding objective of the Rules:

“The double O’s in the phrase Overriding Objectives are what coined what is today famously known as the term Oxygen Principle. In *Hunker Trading Company Limited vs Elf Oil Kenya Limited*, ([2010] eKLR) perhaps the first case to be grounded on the new provisions of the [Appellate Jurisdiction Act](#) (Sections 3A and 3B), it was held that section 1A of the [Civil Procedure Act](#) came in to provide facilitation of just, expeditious and proportionate resolution of civil disputes in Kenya as the overriding objective of the Act.”

21. Section 31 of the [Land Registration Act](#), 2012 provides as follows: -

Production of certificate.

31.

- (1) If a certificate of title or a certificate of lease has been issued, then, unless it is filed in the registry or the Registrar dispenses with its production, it shall be produced on the registration of any dealing with the land or lease to which it relates, and, if the certificate of title or the certificate of lease shows all subsisting entries in the register, a note of the registration shall be made on the certificate of title or the certificate of lease.



- (2) Where the disposition is a transfer, the certificate shall, when produced, be cancelled, and in that case a new certificate may be issued to the new proprietor.
- (3) Where the disposition is a charge, the certificate shall be delivered to the chargee.
22. Considering the prevailing circumstances in this case, this court is enabled by the provisions of Sections 1A, 1B and 3A of the Civil Procedure Act to take any measures necessary to expedite the finalization of this dispute between the parties herein. Further, a look at Section 31 shows that the Registrar may dispense with the production of the original certificate, although generally, the original needs to be produced for him to proceed to register the transmission. In the instant case parties to a succession cause have refused to surrender title. This conduct in my opinion constitutes to intermeddling.
23. In *Morris Mwiti Mburugu v Denis Kimanthi M'Mburugu* [2016] eKLR, the Court while espousing on intermeddling held that:
- “From the foregoing, it is clear, and I so hold, that where any person interferes with the free property of the deceased or deals with an estate of a deceased person contrary to the provisions of sections 45 and 82 of the Act, that is intermeddling, is unlawful and cannot be protected by the Court. The transaction is subject to be nullified and set aside at the instance of the innocent beneficiaries who may have been affected by the act but were not involved in the same.”
24. Besides claiming non-service of the orders issued on 18<sup>th</sup> April, 2023, the respondents have not explained why they are yet to satisfy the consent order of 8<sup>th</sup> May, 2019. Their attempt to have the said consent order set aside and/or reviewed was dismissed by the court on 16<sup>th</sup> December, 2021. The present application was served with a copy of the orders dated 18<sup>th</sup> April, 2023. If indeed the respondents were sincere that they had not been served with the orders one would have expected them to have acted in compliance by now.
25. My finding is that the respondents are well bent on disobeying the orders of the court and frustrating the applicant. The court will not allow that to go on.
26. I therefore in relying on the provisions of sections 1A, 1B and 3A of the Civil Procedure Act, section 31 of the Land Registration Act, 2012 and the cited authorities find merit in the application dated October 4, 2023 which I hereby allow with costs.

Orders accordingly.

**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 29<sup>TH</sup> DAY OF OCTOBER, 2024 IN OPEN COURT.**

**H. I. ONG'UDI**

**JUDGE**

