



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of M’ruthomi M’ndagone (Deceased) (Miscellaneous Application
1 of 2015) [2023] KEHC 117 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 117 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS APPLICATION 1 OF 2015**

LW GITARI, J

JANUARY 19, 2023

IN THE MATTER OF THE ESTATE OF THE LATE M’RUTHOMI M’NDAGONE (DECEASED)

BETWEEN

MERCY MBUTHU JAPHET APPLICANT

AND

MATI M’RUTHIOMI RESPONDENT

RULING

1. The Administratrix/Applicant through an application dated January 7, 2022 seeks the lifting of the inhibition orders issued on August 11, 2010 against the green card for land parcel No Kiera/East Magutuni/1811 (hereinafter referred to as the “suit land”). The application is expressed to have been brought under the provisions of section 47 of the Law of Succession Act and rule 73 of the Probate and Administration Rules.
2. The application is supported by Applicant’s affidavit sworn on the same January 7, 2022 and premised on the grounds that:
 - a. The applicant is the administratrix of the estate of M’Ruthomi M’Ndagone (deceased).
 - b. There exists an inhibition order on land parcel No Kiera/East Magutuni/1811.
 - c. Due to the encumbrance lodged, it is impossible to implement the decree of the court.
 - d. No prejudice shall be suffered if the inhibition orders are lifted and the transfer is done as per the certificate of confirmation of grant.
3. In opposition to the application, the respondent filed a replying affidavit which he swore on February 21, 2022. He depones that the Applicant is misleading the court by using a grant issued in relation to



land parcel No Kiera/East Magutuni/206 to seek orders for lifting of the inhibition orders placed on the suit land, which two parcels of land he claims are completely different.

4. The Applicant filed a Further Affidavit which she swore on April 5, 2022. She conceded that there was an error in respect to the copy of the certificate of confirmation of grant attached to her Application. She however explained that the error occurred while attaching a copy of the certificate of confirmation of grant as the second page of the grant was inadvertently left out of the attachment. In the said Further Affidavit, she attached the complete copy of the certificate of confirmation of grant and prayed that the same be deemed as correctly filed.
5. The court directed on May 5, 2022 that the application be canvassed by way of written submissions. Counsel for the Applicant opted not to put in submission but instead relied on the affidavits of the Applicant. On the other hand, counsel for the Respondent indicated that she would be putting in her submissions. The court granted her 21 days from May 5, 2022 to file the submissions but has failed to do so to date.
6. From the pleadings of the parties on record, the main issue for determination is whether orders sought by the Applicant for the lifting of inhibition orders against the suit land should be granted.
7. As per the certificate of confirmation grant issued on July 3, 2018, the estate of the deceased was to be distributed as follows:
 - a. Land Parcel No Kiera/E.Magutuni/206
 - i. Mercy Kajira - 1 Acre
 - ii. Michael Mutegi - 1 Acre
 - iii. Newton Mati - 1 Acre
 - iv. Lucy Kathambi - 1 Acre
 - v. Purity Gacheri - 1 Acre
 - vi. Nancy Nkatha - 1 Acre
 - vii. Dinah Jane Kathoni - 1 AcreBalance of 1 acre to be shared equally among the above named children.
 - b. Land Parcel No. Kiera/E.Magutuni/1811
 - i. Mercy Mbuthu Japheth - whole
8. Vide an application dated February 18, 2020, the Respondent herein sought the review of the confirmed grant that was issued on July 3, 2018. The said application was dismissed on February 11, 2021 for want of merit. As such, the subject confirmed grant remains valid as the same has never been reviewed or revoked.
9. The applicant did not attach to her application a copy of the green card in respect of the suit land. I however note from the record that there is a search certificate dated March 4, 2020 which is attached to the application with reference to the land parcel No Kiera/E Magutuni/1811. It indicates that the inhibition on the said parcel of land was lodged on August 11, 2010 pending hearing and determination of Civil Suit No 29 of 2010 at the Principal Magistrate's Court at Chuka. This means that the inhibition was an interim injunctive relief.



10. In its decision in *Barclays Bank of Kenya Limited v Henry Ndungu Kinuthia & another* [2018] eKLR, the Court of Appeal held that orders of interlocutory injunction automatically lapse by operation of the law after expiry of a period of 12 months from the date on which they were issued unless they were for sufficient reason extended by the court; that the fact that an order of interlocutory injunction was issued pending hearing and determination of a suit did not constitute sufficient reason to justify its extension beyond a period of 12 months; that the issue of whether or not to extend interim injunctive relief has to be placed before the court for its consideration and determination.
11. The interlocutory injunction resulting in the inhibition lodged in respect of the suit land was issued sometime in 2010 which is over twelve years ago. Applying the decision in *Barclays Bank of Kenya Limited v Henry Ndungu Kinuthia & another*, [supra], it follows that injunctive orders issued in PMCC No 29 of 2010 (Chuka) automatically lapsed by operation of the law in 2011 as there is no evidence that the operation of the orders were extended by the court.
12. In any case, the said PMCC No 29 of 2010 (Chuka) was dismissed on January 26, 2011 which means that the inhibition order lapsed upon the dismissal of PMCC No 29 of 2010 (Chuka) in which the inhibition order was issued. Consequently, it follows that the inhibition orders are not supposed to be on the title as an encumbrance.
13. There is a grant which was issued by this court and although the respondent contends that succession for Land Parcel No Kiera/East Magutuni/1811 has not been done the contrary is the case as the certificate of the confirmation of grant issued on 3/7/2018 shows that the land parcel was distributed to the applicant. I find the entry on the green card of the land parcel in dispute and ought to be removed for the grant issued in this matter to be effected. Section 47 of the *Law of Succession Act* provides: -

The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient: Provided that the High Court may for the purpose of this section be represented by resident magistrates appointed by the Chief Justice.”

This is buttressed by rule 73 of the *Probate and Administration Rules* which provides that;

Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary or to prevent abuse of the process of the court.”

The inhibition was an order of the court. No action was taken after the case was dismissed. The entry on the green card is not serving any purpose and has prejudiced the applicant who cannot effect the grant when the entry is on the green card. The court has jurisdiction to order that the entry be removed. I therefore find that the application has merits. I order that The entry lodged on the title No Kiera/E Magutuni/1811 be removed forthwith.

Costs to the applicant.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 19TH DAY OF JANUARY, 2023.

L.W. GITARI

JUDGE

19/1/2023

The ruling has been read out in open court.

L.W. GITARI



JUDGE

19/1/2023

