



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

In re Estate of James George Maruti aka James Maruti (Deceased) (Succession Cause E013 of 2021) [2023] KEHC 21389 (KLR) (28 July 2023) (Ruling)

Neutral citation: [2023] KEHC 21389 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE E013 OF 2021**

DK KEMEL, J

JULY 28, 2023

**IN THE MATTER OF THE ESTATE OF JAMES
GEORGE MARUTI AKA JAMES MARUTI-DECEASED**

BETWEEN

TRUTEA MARUTI PETITIONER

AND

LILIAN WAMUKOYA MARUTI INTERESTED PARTY

AND

FREDRICK KILALI MARUTI RESPONDENT

RULING

1. The interested party herein in her summons dated July 15, 2022 sought the following orders;
 - a. Spent
 - b. Pending the hearing and determination of this application, the court does grant orders of temporary injunction restraining the respondent Fredrick Kilali Maruti, his servants, agents and or employees from transferring, disposing, selling, sub-dividing or in any other manner intermeddling with any of the properties of the deceased herein namely; Kimilili Market Plot No D2 and D4, Kimilili/Kimilili/6443 and 6497 and all other sub—divisions of the latter two plots being Kimilili/Kimilili/6636, 6637,6638,6639,6640,6641, 6782,6783 and 6784 and separately Kimilili/Kimilili/6537, 7009 and 7010.
 - c. Pending the hearing and determination of this application, the land registrar Bungoma county be ordered to register and maintain prohibition order against the following properties; Kimilili Market Plot No D2 and D4, Kimilili/



Kimilili/6463 and 6497 and all the sub-divisions of the latter 2 plots being Kimilili/Kimilili/6636, 6637,6638,6639,6640,6641, 6782,6783 and 6784 and separately Kimilili/Kimilili/6537, 7009 and 7010 prohibiting any further or other transactions of transfer, disposition, sale, sub-division, irrespective of whosoever entity's name such properties may have been registered or transferred or otherwise sold to, for purposes of preservation of the same from wastage or further disposition.

- d. Pending the hearing and determination of this application, the land registrar Bungoma county be ordered to disclose to this honourable court all the sub-divisions and transfers and names of current registered owners of such sub-divided and transferred portions, if any, already undertaken in relation to all the properties namely; Kimilili Market Plot No D2 and D4, Kimilili/Kimilili/6443 and 6497.
 - e. Pending the hearing and determination of this application, the court issues temporary injunction restraining the respondent Fredrick Kilali Maruti, his servants and or employees from howsoever interfering with the interested party's quiet use, possession and enjoyment of the properties known as Kimilili/Kimilili/7009 and Kimilili Market Plot No D2 respectively.
 - f. Pending the hearing and determination of the petition herein by way of distribution of the estate of the deceased, the honourable court be pleased to grant the orders sought in prayers 2,3,4 and 5 in the instant application.
 - g. Pending the hearing and determination of the petition, the land registrar Bungoma county be ordered to cancel the sub-divisions and transfers relating to parcel Numbers arising from Kimilili market Plot No D2 and D4, Kimilili Market Plot No D2 and D4, Kimilili/Kimilili/6443 and 6497 and all other sub—divisions of the latter 2 plots being Kimilili/Kimilili/6636,6637,6638,6639,6640,6641, 6782,6783 and 6784 and separately Kimilili/Kimilili/6537, 7009 and 7010 and restore the original title deeds of Kimilili Market Plot No D2 and D4 Kimilili/Kimilili/6443 and 6497 in the deceased's name.
 - h. Costs of the application.
2. The parties appeared before this court on 26/7/2022 and orders in terms of prayers b), c)), d) and e) were granted. What therefore remains to be determined are the rest of the prayers sought in that application.
 3. The application is supported by the interested party's supporting affidavit in which she depones that she is the deceased's daughter in law by virtue of having been married to Pius Kilali (deceased), a son to the deceased herein. That the deceased herein was survived by; Sylvester Muhuyi Maruti (deceased), Florence Muhindi Maruti, Patrick Juma Maruti (Deceased), Pius Kilali Maruti (deceased), Gertrude Maruti, Robert Wekesa Maruti, Rose Maruti, Fredrick Kilali Maruti, Agneta Maruti, Lawrence W. Maruti, Peter Maruti, Karen Maruti, Dennis Maruti and Cecilia Maruti.
 4. She depones that at the time of his death, the deceased owned four parcels of land namely; Kimilili Market Plot No D2 and D4, Kimilili/Kimilili//6443 and 6497. That the said parcels of land have since been sub-divided by the deceased's sons namely Sylvester Muhuyi Maruti and Fredrick Kilali



- Maruti before obtaining letters of administration in collusion with the land registrar and that single new numbers have been issued over the parcels.
5. She depones that she occupies Kimilili Market Plot No D2 where she carries on hotel business after leasing it from her deceased father in law. That the premise was leased to her and Pius Kilali Maruti and have been paying rent from the year 2001. She depones that she has undertaken tremendous renovation in the building as it was dilapidated with the deceased's blessings.
 6. She depones that the respondent has threatened to take possession of the plot housing the hotel for undisclosed reasons which may include disposing to 3rd parties thereby depriving her and her family their only source of livelihood.
 7. She further depones that the transfers undertaken by the respondent included her matrimonial home which she established in 1991 having been given by the deceased. That subsequent meetings held to discuss the progress of distribution have failed at the respondent's instance.
 8. The respondent opposed the application by way of a replying affidavit.
 9. The court directed the disposal of the application by way of written submissions. It is only the interested party who complied by filing her submissions dated April 14, 2023 whose contents have been taken into consideration.

Analysis and determination.

10. In light of the orders granted earlier in the matter, the only issue remaining relate to the grant of temporary injunctive orders pending the determination of the cause and that of cancellation of title deeds allegedly issued after the deceased's death.
11. The interested party states that she is the deceased's daughter in law having been married to one of the deceased's son Pius Kilali Maruti. That she had since obtained limited letters of administration to her late husband's estate prior to instituting the instant application. I find that she has the necessary locus standi to institute the instant application based on the authority in *In re Estate of the Late M'thigai Muchangi (Deceased)* [2020] eKLR, where it was held;

A daughter-in-law is a beneficiary of the estate of the deceased father-in-law in a situation where she has survived her deceased husband who is a child of the deceased (father-in-law) to whose estate the matter relates.
12. On the issue of temporary injunctive orders pending determination of the cause, the interested party asserts that she is in occupation of one of the plots forming the estate and that she has established her matrimonial home in one of the parcels forming the estate. She is apprehensive that if the respondent is not restrained from further interference in the estate, she will be disinherited.
13. It is not in doubt that the deceased herein died intestate on 23/2/2017 leaving behind four parcels already stated. The respective green cards have been annexed to the application. Going by the evidence tendered herein, the interested party availed a copy of mutation for parcel number Kimilili/Kimilili/6443 showing that the land has been sub-divided into five portions. The mutation is dated 7/7/2017 way after the deceased had passed on. She also annexed documents from the land registry showing that the respondent and one Sylvester Muhuyi Maruti are the registered owners of the parcels of land and others transferred to third parties for instance Catholic Diocese of Bungoma.
14. I have also seen a letter from the Chief Officer, Lands, urban/physical planning & housing dated August 18, 2020 addressed to the County Director Revenue indicating the approval of the transfer



of Plot No 2 Kimilili D market to the petitioner herein. This is the same parcel the interested party is allegedly using for her business.

15. From the onset, I must say that this purported transfer is illegal for the reason that letters of administration in the matter have not been confirmed in line with section 71 of Cap 160. The said transfer is premature and contravenes the law.
16. The petition for letters of administration was lodged in court by the petitioner, the deceased's widow on October 12, 2021. The same is pending confirmation in this court.
17. It is my finding that before confirmation of the grant in the matter, there should be no dealing with the estate as such dealing before the confirmation amounts to intermeddling with an estate which is prohibited by section 45 of Cap 160.
18. In the circumstances, by virtue of my earlier finding that the interested party is entitled to institute the application to protect her late husband's stake in the estate, I find that there is need to protect the estate pending the confirmation of the grant herein.
19. It is trite law that a temporary injunction ought to be granted where an applicant has met the conditions set out in Giella vs Cassman Brown [1973] E.A 358. In Mrao Ltd v. First American Bank of Kenya Ltd & 2 ors Civil Appeal No 39 of 2002, the court described prima facie case as:

“in civil case, it is a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has been infringed by the opposite party as to call for an explanation or rebuttal from the latter”

20. Having gone through the application, the responses and the interested party's submissions, I find that the interested party has protectable interest in the estate which ought to be protected by this court by way of a temporary injunction restraining further transactions and or wastage of the estate before the grant is confirmed.
21. On the issue of cancellation of title to the original numbers, as stated above, the petition for letters of administration is pending. The same has not been confirmed yet the evidence placed before this court shows that the respondent and his deceased brothers have already obtained, titles and subsequently transferred them to third parties.
22. Also as stated earlier, this procedure was wrong and if not checked by way of cancellation of titles so issued irregularly, there is risk that the same may be further transferred to other parties not before the court.
23. By dint of Rule 73 of the Probate and Administration Rules, this court is empowered to issue orders geared towards protecting the estate. The Rule donates to the court inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.
24. In Edema & 2 others v Edema & 5 others (Miscellaneous Succession Cause E001 of 2022) [2022] KEHC 9960 (KLR) (6 July 2022) (Ruling), it was held;

Going by the affidavit of the 1st Applicant, there is likelihood of the estate being wasted before appropriate measures are taken. It is the duty of the Probate Court to protect the estate of a deceased person where there is likelihood of it being wasted before a succession cause is filed. This power emanates from the provisions of Rule 73 of the Probate & Administration Rules that gives the court inherent power to make such orders as may be necessary to meet the ends of justice or to prevent abuse of the process of the court.



25. Having noted that the petitioner as well as the respondent have engaged in acts likely to cause wastage of the estate and in a bid to preserve the estate so that it can be available during distribution, i hereby direct the land registrar Bungoma County to rectify the register by cancelling all resultant sub-divisions emanating from the original parcel numbers Kimilili/Kimilili/6463 and 6497 and revert them to the original parcel bearing the name of James George Maruti the deceased herein.
26. For the above analysis, I come to the conclusion that the application dated July 15, 2022 is merited. As prayers 2, 3, 4, and 5 had been granted, I hereby grant prayer number 7 thereof. As a grant has already been issued to the Petitioner, she should now proceed to file the requisite summons for confirmation of grant so that the issue of distribution can be addressed. This being a family matter, each party shall bear their own costs.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT BUNGOMA THIS 28TH DAY OF JULY, 2023.

D. KEMEI

JUDGE

In the presence:

Miss Achieng Omollo for Interested party/Applicant

Buloa for Petitioner

..... **Respondent

Kizoto Court Assistant

Ruling in Criminal Revision No E125 of 2021 4

