



Njenga ((As the legal representative of the Estate of James Njenga Kinuthia)) v Land Registrar, Kajiado County (Environment & Land Case E10 of 2021) [2023] KEELC 17100 (KLR) (25 April 2023) (Ruling)

Neutral citation: [2023] KEELC 17100 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E10 OF 2021**

MN GICHERU, J

APRIL 25, 2023

BETWEEN

**CHARLES KARIUKI NJENGA (AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JAMES NJENGA KINUTHIA) APPLICANT
(AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JAMES NJENGA KINUTHIA)**

AND

LAND REGISTRAR, KAJIADO COUNTY RESPONDENT

RULING

1. This ruling is on the Notice of Motion dated 23/6/2022. The motion which is brought under section 5(1) of the *Judicature Act*, sections 1A, 1B, 3 and 3A of the *Civil Procedure Act* and Rule 81.4 of Part 81 of the *English Civil Procedure Rules* seeks two orders –
 2. That Sheila Nandako, the incumbent of the office of the Land Registrar County be cited for contempt of court and punished by way of imprisonment for up to 6 months and/or fined by attachment of her personal property until she purges her contempt.
 3. That the costs of this application be provided for.
2. The motion is supported by an affidavit sworn by the Applicant Charles Kariuki Njenga dated 23/6/2022 and several grounds. In brief, the Applicant deposes that the Respondent has refused to comply with the court order dated 30/11/2021 which required the Respondent to furnish the Applicant with records relating to the transfer of L.R. Kajiado/Kisaju/3579-92 from James Njenga Kinuthia to several individuals named in the order.

The applicant contends that the refusal to furnish the said records is deliberate as his advocate has made several inquiries at the registry to no avail.



3. The motion is opposed by the Respondent and to his end, the Honourable the Attorney General has filed seven grounds of opposition dated 15/7/2022. The grounds include the following.

Firstly, the application is premature, misconceived and bad in law.

Secondly, the contemnor should not be sued in her personal capacity as she is not a party in the suit. She should therefore be sued in her official capacity. Other grounds are that a copy of the said order has not been enclosed; the letters of administration issued in the Succession Cause are not accompanied by the ruling in the Intestate Succession Petition that lists the property which the applicant has the right to administer and this makes the documents incomplete and incapable for compliance; there is variation between the letters of administration and the supporting affidavit dated 23/6/2022 as to who between the applicant and Catherine Njoki Njenga is the true administrator of the estate of the deceased. In these circumstances, the application is fatally incompetent and incurably defective.

4. In addition to the above Sheila Nandako, Land Registrar Kajiado, has sworn a replying affidavit dated 14/10/2022 in which she denies deliberately failing to comply with the court order dated 3/12/2021. She deposes that it is procedural to verify all court orders and this takes time. Secondly, since the filing system at the registry is manual, it takes time to retrieve the required documents.

Thirdly, the registry has managed to trace some of the documents relating to L.R. 3584, 3585, 3587, 3589, 3590 and 3591. She concludes by urging the court to find that the delay is excusable.

5. Counsel for the applicant filed written submissions on 14/3/2023 in which he urges the court to find that the respondent is surely in contempt of the court because she has partially complied with the order and is therefore capable of complying with it fully. He concludes by saying that the Respondent has not offered a reasonable explanation for failure to fully comply with the order as it is not alleged that the records are destroyed, lost or incapable of being traced.

6. I have carefully considered the notice of motion in its entirety including the affidavits by the applicant and the respondent, the grounds by each one of them as well as the submissions.

I find that the respondent has given a good explanation for the delay in supplying the required records namely, long process of verification where she depends on others to verify and the manual filing system which is slow and cumbersome. She has further acquitted herself by providing some of the records.

Consequently, I dismiss the notice of motion dated 23/6/2022 with no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25TH DAY OF APRIL, 2023.

M.N. GICHERU

JUDGE

