



**In re Estate of the Late James Kamau Kagiri (Deceased) (Succession Cause 533 of 2006) [2023] KEHC 21107 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21107 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 533 OF 2006  
HK CHEMITEI, J  
JULY 27, 2023  
IN THE MATTER OF THE ESTATE OF THE LATE JAMES  
KAMAU KAGIRI (DECEASED)**

**BETWEEN**

**SIMON NJENGA KAMAU ..... 1<sup>ST</sup> PETITIONER  
DOUGLAS WAINAINA KAMAU ..... 2<sup>ND</sup> PETITIONER  
JANE WANJIRU KAMAU ..... 3<sup>RD</sup> PETITIONER**

**AND**

**STEPHEN KUNGU KAMAU ..... 1<sup>ST</sup> PROTESTOR  
ELIZABETH NYAMBURA KAMAU ..... 2<sup>ND</sup> PROTESTOR**

**RULING**

1. In their summons dated September 12, 2022 the petitioners /applicants pray for the following orders;
  - (a) That the court be pleased to appoint and allow Ngotho Commercial Agencies to finance the discharge of charge of Nakuru Municipality Block 1/660 and handle valuation, rates, survey, subdivision, processing of titles and sale of the properties Nakuru Municipality Block 1/660 and Plot No 386 Pangani Estate in terms of the quotation dated August 22, 2022.
  - (b) That thereafter Ngotho Commercial Agencies to deduct their costs as per the letter dated August 22, 2022.
  - (c) That the administrators of the estate of the 1<sup>st</sup> house Simon Njenga Kamau and Douglas Wainaina Kamau be ordered to render an account of the estate concerning the properties of the 1<sup>st</sup> house to the court.



2. The application is supported by the sworn affidavit of Douglas Wainaina Kamau dated September 8, 2022 and the grounds on the face of the application.
3. The said applicant deponed that after the consent dated July 19, 2022 he went with the 1<sup>st</sup> protestor Stephen Kungu Kamau to the offices of Ngotho Commercial Agencies and agreed on raft of issues concerning how they shall deal with properties namely Nakuru Municipality Block 1/660 and plot number 386 Pangani estate so as to effect the consent.
4. He said that the said agency agreed to fund the entire exercise including payment of any existing liabilities and the conveyancing exercise. The protestors he said have since reneged and he thus seeks the authority of this court through this application.
5. The 1<sup>st</sup> protestor Stephen Kungu Kamau in his replying affidavit dated November 25, 2022 has opposed the application. He however agreed that they went to the said agent but it was when they enumerated its expenditure that he was forced to inquire more. He said for example that the charge against the property amounting to Kshs 600,000 had been paid off and he exhibited a discharge of charge to that effect
6. He further stated that there was no sub division of the property since the same had already been done and that titles had been issued. That parcel number 386 Pangani estate has discrepancy on the ground and would therefore require rectification.
7. His objection therefore was on the expenses to be incurred by the proposed agents without any adequate supporting documents.
8. There was also an objection by one Philip Fredrick Gakunju through his replying affidavit sworn on April 14, 2023 in which he more less sided with the 1<sup>st</sup> protestor. He questioned how the agent was selected among other complains.
9. He went ahead and accused the petitioners of conniving and receiving rents from the properties after evicting the tenants and allowing them to move back. He accused them of failing to account for the use of the proceeds from the estate.
10. The court directed the parties to file written submissions which they did comply except the 1<sup>st</sup> protestor. The court has perused the same exhaustively.
11. What bedevils the parties herein is simply an exercise of inflated egos and lack of mutual trust. As a result, those who are enjoying the use of the estate would want to drag the matter to its longest level of delay. The rest of the parties have fallen into the trap and instead of ensuring that the matter is concluded as per the consent of July 12, 2022 they are blind folded so to speak with unnecessary applications and whining.
12. This court will not obviously depart from the parties consent of July 12, 2022. They all agreed on the 9 issues. This court will not introduce another issue and will not wish to entertain side shows again.
13. Consequently, and so as to save the precious judicial time it is hereby directed that the parties should comply with all the areas which are yet to be finalised as per the said consent despite the loss of time.
14. The parties are hereby directed to do the following;
  - (a) Either approve M/s Ngotho Commercial Agencies to carry out the conveyancing exercise or within 14 days from the date herein appoint a new agent to carry out the exercise.



- (b) Within 14 days from the date herein ascertain whether there is a charge or discharge and for how much on land parcel number Nakuru Municipality Block 1/660 and it has been settled.
- (c) Within 14 days from the date herein ascertain whether there is discrepancy on the title for plot number 386 Pangani estate on the ground and whether a sub division has since been carried out and titles issued.
- (d) Within 14 days from the date herein ascertain whether the two properties herein are encumbered in form of land rates, rent or any other liability known or unknown and agree on how they should be paid.
- (e) All the above ascertainment shall be in writing and supported by valid documentations and not oral.
- (f) This matter shall be mentioned on September 19, 2023 to confirm compliance.
- (g) Each party shall bear its own costs.

**Dated signed and delivered via video link at Nakuru this 27<sup>th</sup> day of July 2023.**

**H K CHEMITEI**

**JUDGE**

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