



**In re Estate of Luka Thambu Ritaugu (Deceased) (Succession Cause  
288 of 2000) [2023] KEHC 22999 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22999 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 288 OF 2000  
EM MURIITHI, J  
SEPTEMBER 28, 2023  
IN THE MATTER OF THE ESTATE OF LUKA THAMBU RITAUGU (DECEASED)**

**BETWEEN**

**MATTHEW GITUMA ..... PETITIONER**

**AND**

**COSMAS MURIUNGI ..... RESPONDENT**

**RULING**

1. The Issue in dispute between the parties in this Cause concerns a parcel of land plot no. 69B Mikinduri Market, Meru, both the petitioner/applicant and the Respondent, respectively son and grandson of the deceased claiming an interest in the plot. The issue has been the subject of several proceedings both in this Cause and in the Environment and Land Court and now the primary question before the court is simple. Can the High Court as the succession court by way of succession proceedings confirm a grant in which a property which the subject of an ownership dispute pending hearing and determination before the Environment and Land Court on appeal from the Magistrate's Court?
2. Coupled with this question is a corollary whether the Environment and Land Court being already seized of the appeal from the trial court on the ownership dispute, it would be proper in accordance with judicial policy to proceed with the application for confirmation of Grant for the distribution of the property along with other estate assets in a manner that may give rise to contradicting determination by two courts of equal status.
3. Is it not to mount parallel proceedings for the determination of the same question of the ownership of the suit property which has been determined at the first instance by the Environment and Land trial court and is pending hearing and determination before the appeal court. Is such proceeding nor barred by the principles of sub judice and res judicata under, respectively, sections 6 and 7 of the *Civil Procedure Act*, which in terms of section 89 of the Act applies to all civil proceedings?



4. To the extent that there is a judgment of the first instance trial court of the Environment and Land Court, the question of ownership of the plot 69B is res judicata, and to the extent that there is pending an appeal to the Environment and Land Court, it is sub judice and this court may not proceed to hear and determine a related question. The application for confirmation herein dated 29<sup>th</sup> November 2021 was filed on 30 November just a week before the Ruling of the Environment and Land Court of 8<sup>th</sup> December 2021.
5. The respectful view of the court is that the application for confirmation must await the determination of the appeal pending before Environment and land Court.
6. In order not to prejudice and embarrass the Environment and Land Court, this Court does not make any findings on the merits of the matter.

### **Orders**

7. Accordingly, for the reasons set out above, this court makes the following orders:
  1. The application for Confirmation of Grant herein made to the petitioner is held in abeyance to await the determination of the appeal on the question of ownership of the suit property Plot 69B Mikinduri Market by the Environment and Land Court.
  2. The matter shall be mention for purposes of establishing whether the appeal has been concluded and for further directions as necessary and appropriate on 15/2/2024.
  3. There shall be no order as to costs.
- 8 Order accordingly.

**DATED AND DELIVERED ON THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2023.**

**EDWARD M. MURIITHI**

**JUDGE**

### **Appearances:**

Mr. J. Mwiti Advocate for the appellant.

Respondent in person.

