



**In re Estate of Kerubo Matara (Deceased) (Family Miscellaneous Application  
1 of 2023) [2023] KEHC 25841 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25841 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
FAMILY MISCELLANEOUS APPLICATION 1 OF 2023  
WA OKWANY, J  
NOVEMBER 30, 2023**

**BETWEEN**

**JAMES MATWERE MATARA ..... 1<sup>ST</sup> APPLICANT**

**EDWARD OGEKA MATWERE ..... 2<sup>ND</sup> APPLICANT**

**AND**

**NICODEMUS ASANDE MATARA ..... 1<sup>ST</sup> RESPONDENT**

**IAN PHILLETUS MATARA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Applicants filed this Miscellaneous Application on 12<sup>th</sup> October 2023 seeking the following orders: -
  1. Spent
  2. That the Honourable Court be pleased to issue conservatory order in the respect of West Mugirango/Bosamaro West/283 barring any dealings over the same pending the hearing and determination of this application inter partes.
  3. That the Honourable Court be pleased to issue order revoking and/or annulling grant of letters of Administration intestate issued on 15<sup>th</sup> November 2001 and confirmed on 30<sup>th</sup> May 2002 in Kisii High Court Succession Cause No. 215 of 2001.
  4. That cost of this application be provided for.
2. The application is supported by the 1<sup>st</sup> Applicant's affidavit dated 11<sup>th</sup> October 2023 wherein he states that the deceased, who was his grandmother, was the registered Proprietor of Land Parcel No. West Mugirango/Bosamaro West/282 (hereinafter "the suit land"). He further avers that the deceased was survived by his sons who are now also deceased except the 1<sup>st</sup> Respondent who obtained Grant of



Letters of Administration Intestate on 15<sup>th</sup> November 2001 without his knowledge. He adds that upon conducting a search in the Lands Registry on 2<sup>nd</sup> December 2021, he discovered that the Respondents had secured registration as the owners of the suit land at the expense of his late father one Nelson Matwere Matara.

3. He states that the Land Registrar advised him to conduct a proper Succession on the deceased's estate thus precipitating the filing of this application for the revocation/annulment of the grant issued to the Respondents.
4. The Respondents opposed the application through Grounds of Opposition dated 13<sup>th</sup> October 2023 wherein they state that: -
  1. The court herein lacks jurisdiction to handle the application as filed and therefore, cannot issue prayer number Three (3) as prayed by virtue of Rule 44 of the *Probate and Administration Rules*.
  2. The court herein lacks jurisdiction to handle the matter herein if the matter is placed before the Environment and Land Court as shown on the first page of the application.
  3. That the application is incurably defective in substance and cannot be entertained by the court herein and therefore, it ought to be dismissed with costs.
5. Directions were on 19<sup>th</sup> October 2023 issued that the application be canvassed by way of written submissions after which the matter was listed for mention on 6<sup>th</sup> November 2023. When the matter came up for mention on 6<sup>th</sup> November 2023, only the Respondents had filed their submissions. The court then fixed the application for ruling.
6. I have considered the application, the grounds of opposition and the Respondents' submissions.
7. The main issue for determination is whether this court has the jurisdiction to hear and determine the application.
8. As can be noted from the wordings of the prayers contained in the application, the Respondents seek orders to revoke Grant of Letters of Administration that were issued and confirmed in May 2002 before Kisii High Court in Succession Cause No. 215 of 2001.
9. This court is at a loss as to why the Applicants chose to file the application as a Miscellaneous Application before this court instead of Kisii High Court where the Succession Cause was initiated and concluded.
10. My considered view is that the proper and known procedure is for applications of this kind to be made before the court that dealt with the Succession Cause and in the same file where the Grant was issued. Indeed, the *sub judice* doctrines frowns upon the filing of multiple suits over the same subject matter.
11. For the above reasons, I find that the instant application is misplaced and I therefore strike it out. Since the parties in the application are relatives, I order that each party shall bear his own costs.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS AT NYAMIRA THIS 30<sup>TH</sup> DAY OF NOVEMBER 2023.**

**W. A. OKWANY**

**JUDGE**

