



REPUBLIC OF KENYA



**Ephraim & 4 others v Mutindwa (Civil Case 29 of 2019)
[2022] KEHC 317 (KLR) (24 March 2022) (Ruling)**

Neutral citation: [2022] KEHC 317 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CIVIL CASE 29 OF 2019
LW GITARI, J
MARCH 24, 2022
(FORMERLY CHUKA CM'S COURT SUCCESSION
CAUSE NO. 157 OF 2017**

BETWEEN

**HILDAH MARY EPHRAIM 1ST APPLICANT
ASENATH MUGURE MUGAMBI 2ND APPLICANT
MERCY MUTHONI IRERI 3RD APPLICANT
ANN MUKWANYAGA MUTINDWA 4TH APPLICANT
DORCAS KAARI MUTINDWA 5TH APPLICANT**

AND

FRANKLINE KITHINJI K. MUTINDWA RESPONDENT

RULING

1. Before this court is the summons application dated 20th August 2021 and filed on 24th August 2021. It is expressed to be brought under the provisions of Section 47 of the [Law of Succession Act](#) and Rules 49 and 73 of the Probate and Administration Rules.
2. The application seeks for the following orders:
 - a. Spent.
 - b. That the court be pleased to order and direct land registrar to reverse L.R.Mwimbi/C.Magutuni/2055-2061 all in the name of the Respondent, Frankline Kithinji K. Mutindwa to their original number Mwimbi/C.Magutuni/316 in the name of Ephraim Mutindwa Karanga (deceased).



- c. Cost be in cause.
3. The application is premised on the grounds on the face of the application and is supported by the affidavit of Hildah Mary Ephraim sworn on 20th August 2021 on behalf of herself and the 2nd – 5th Applicants. The Applicants contend that they are apprehensive that unless the orders sought herein are granted, the Respondent is likely to dispose of the estate rendering the judgment of this court, that was issued on 27th July 2021, nugatory.
4. The Respondent opposed the application vide his Replying Affidavit sworn on 9th September 2021. He deponed that the said parcels are not entirely in his name but are also distributed to and in the names of other beneficiaries of the subject estate. According to him, this application has been brought in bad faith as he does not have the capacity, intention, interest and/or plans whatsoever to alienate the property in question. He thus urges this court to dismiss the application with costs terming it to be highly academic and a waste of judicial time.
5. The application was canvassed by way of written submissions.

Applicants’ Submissions

6. The Applicants’ Counsel filed the Applicants’ written submissions on 17th November 2021. They submitted that unless the subdivisions of L.R. Mwimbi/C.Magutuni/316 are reversed to the name of the deceased, it will be difficult if not impossible to implement the judgment of this court that was rendered on 27th July 2021. They thus urged this court to allow the application in order to protect the estate of the deceased until it is finally distributed.

Respondent’s Submissions

7. The Respondent, through his counsel on record, filed his written submissions on 17th November 2021. It was his submission that the current distribution of L.R. Mwimbi/C.Magutuni/316 is per the wishes of the deceased and his surviving widow and should thus be allowed to subsist as it is.

Issue for determination

8. I have considered the application and the grounds it is premised on as well as the affidavits on record, and the respective submissions by the counsel for the parties. In my view, the main for determination is whether the present application has merits.

Analysis

9. This cause relates to the estate of Ephraim Mutindwa M’Karanga alias Epraim Mutindwa M’Karanga who died intestate on 31st July 2015.
10. There are two properties that form the estate of the deceased, that is:
 - a. L.R. Mwimbi/C.Magutuni/316, and
 - b. L.R. Mwimbi/C.Magutuni/685.
11. Land parcel L.R. Mwimbi/C.Magutuni/316 was subdivided into 8 parcels pursuant to the grant that was issued to the Respondent on 24th January 2018 and confirmed on 24th September 2018.
12. The said land parcel was transferred to the beneficiaries of the deceased as follows:
 - i. L.R.Mwimbi/C.Magutuni/2054 – 0.041 Ha
Assenath Mugure Mugambi



- ii. L.R.Mwimbi/C.Magutuni/2055 – 0.041 Ha
Mercy Muthoni Ireri
 - iii. L.R.Mwimbi/C.Magutuni/2056 – 0.041 Ha
Anne Mukwanyaga Mutindwa
 - iv. L.R.Mwimbi/C.Magutuni/2057 – 0.041 Ha
Dorcas Kaari Mutindwa
 - v. L.R.Mwimbi/C.Magutuni/2058 – 0.041 Ha
Harriet Ukima Kamau
 - vi. L.R.Mwimbi/C.Magutuni/2058 – 0.041 Ha
Esther Wanja Mugendi
 - vii. L.R.Mwimbi/C.Magutuni/2060 – 0.041 Ha
Frankline Kithinji K. Mutindwa
 - viii. L.R.MWIMBI/C.MAGUTUNI/2061 – 4.87 Ha
Frankline Kithinji K. Mutindwa
13. On 12th February 2020, this court (Hon. Justice L.K. Limo) revoked the grant and ordered that all the attendant transactions from the said grant be reversed.
 14. Upon revocation, a fresh grant was issued to both Edith Ntagana Ephraim and Hilda Mary Ephraim.
 15. By the judgment delivered by this court on 27th July 2021, it was held, *inter alia*, that the deceased's widow, Edith Ntagana, should have a life interest over L.R. Mwimbi/C.Magutuni/316 after reversal of its subdivisions. It was also held that the net intestate estate of the deceased should be shared equally amongst the children after the expiry of the widow's life interest.
 16. The grounds for bringing this application are that the Respondent is the registered proprietor of L.R. Mwimbi/C.Magutuni/2060 and 2061, which measures 12.5 acres out of the entire land that measure 13.0 acres. The Applicants indicate that they are apprehensive that if this application is not allowed, the Respondent may dispose of the said two parcels of land to their detriment and disadvantage.
 17. Under Section 47 of the *Law of Succession Act*, the law provides that this court has inherent powers to make appropriate orders in the interest of justice and for the preservation of the deceased's estate. The section reads as follows:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under the Act and pronounce such decrees and make such orders therein as may be expedient; provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.”
 18. Rule 73 of the Probate and Administration Rules also provides;

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
 19. This court has already rendered itself as a probate court in terms of determining the assets of the deceased, the identity of the survivors of the deceased, and the mode of distribution of the assets amongst the survivors. This court held that the equal distribution of land parcel no. L.R. Mwimbi/



C.Magutuni/316 among the surviving children will only crystallized upon the death of the deceased's widow and the subdivisions will only be carried out after the event.

20. The Respondent, on his part, has indicated that he does not intend to dispose of the estate. Thus, the Applicants' apprehension remains unsubstantiated with evidence. Nevertheless, it is my view is that this Court has discretion to make orders which are necessary in the interest of justice and for just conclusion of causes which relate to the estates of deceased person. The Law of Succession Act gives this court wide powers to make such orders including order that are necessary to preserve the estate of the deceased among others. I opine that the provisions under which this application is brought gives this court inherent powers to entertain the application and make orders that would be in the interest of justice.
21. It is trite that court orders are not made in vain. This court (Limo Judge) in a ruling dated 12/2/2020 directed that All attendant transaction from the grant which was revoked be reversed. This means that all transactions which were carried out under the impugned grant we re nullified and the estate reverted back in the name of the deceased. This order has not been varied or set aside. No party can hold onto subdivisions which have been nullified. The applicant is seeking the effect (enforce) the ruling by this court. The respondent has no right to hold the subdivisions in his name contrary to the orders issued by this court. I find that the application has merits.

I order as follows:-

1. The application is allowed as prayed.
2. The Land Registrar is ordered to reverse parcels No. Mwimbi/C.Magutuni/2055-2061 to their original number Mwimbi/C.Magutuni/316 in the name of Ephraim Mutindwa Karanja (deceased).
3. I make no orders as to costs.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 24TH DAY OF MARCH 2022.

L.W. GITARI

JUDGE

24/3/2022

The Judgment has been read out in open court.

L.W. GITARI

JUDGE

24/3/2022

