



REPUBLIC OF KENYA



In re Estate of M’Imaingi Thirungu (Deceased) (Succession Cause E025 of 2021) [2022] KEHC 18063 (KLR) (31 May 2022) (Ruling)

Neutral citation: [2022] KEHC 18063 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE E025 OF 2021
EM MURIITHI, J
MAY 31, 2022**

BETWEEN

**CIABAIBAYA M’IMAINGI 1ST APPLICANT
PRISCILLA GAKOU M’IMAINGI 2ND APPLICANT
NANIS NKATHA MAINGI 3RD APPLICANT
MARGARET MUROCIA M’IMAINGI 4TH APPLICANT**

AND

**JUSTUS KIRATHE M’IMAINGI 1ST RESPONDENT
DAVID THIANKOLU NABEA 2ND RESPONDENT
ARAYA NG’OLUA 3RD RESPONDENT
BERNARD GIKUNDI 4TH RESPONDENT
URRU COUNTY LAND REGISTRAR 5TH RESPONDENT**

RULING

1. This is a consolidated ruling on two applications respectively dated April 5, 2023 and September 30, 2021, the former being an application to arrest the delivery of the latter on ground of lack of opportunity to be heard.
2. By Summons under certificate of urgency dated September 30, 2021 pursuant to Sections 45, 47 and 82 of the [Law of Succession Act](#) and Rule 73 of the [Probate and Administration Rules](#), the applicants seek that:
 1. The Honorable Court be pleased to issue a Temporary order of Injunction restraining the respondents Justus Kirathe M’Imaingi – son to the



deceased, David Thiankolu Nabea – Area Chief Kianjai location, Araya Ng’olua – Assistant Chief Kianjai Sub-location and Bernard Gikundi – Assistant Chief whether by themselves, their representatives, agents or anyone working at their behest from entering, selling, disposing, using, wasting, fencing, intermeddling, interfering or in any manner dealing with the properties of the deceased person herein M’Imaingi Thirungu (deceased) Meru/kianjai/7567, Tigania/kianjai/599, Kianjai/kianjai/7565, Meru/kianjai/750, Kianjai/kianjai/4359, Akithi/arithiii/1407, Kianjai/kianjai/7564, Kianjai/kianjai/3657, Kianjai/kianjai/3758, Kianjai/kianjai/7566, Kianjai/kianjai/7568, Kianjai/kianjai/7569.

2. The honorable court be pleased to issue an order directing justus kirathe m’imaingi to forthwith remove the barbed wire fence and/or any fence he has erected or placed on the on the deceased’s properties Kianjai/kianjai/3758, Kianjai/kianjai/7565, Kianjai/kianjai/7564.
 3. The honorable court be pleased to find that the 1st respondent’s act of subdividing the deceased land, allocating the deceased person’s land to himself and processing of title deeds in his name and in the name of some beneficiaries without first authority and letters of administration from court amounts to intermeddling with the deceased estate, is illegal, null and void ab initio.
 4. An order do issue cancelling and revoking all the subdivisions, the title deeds processed, obtained and/or issued in respect of the deceased properties known as Meru/kianjai/7567, Tigania/kianjai/599, Kianjai/kianjai/7565, Meru/kianjai/750, Kianjai/kianjai/4359, Akithi/arithiii/1407, Kianjai/kianjai/7564, Kianjai/kianjai/3657, Kianjai/kianjai/3758, Kianjai/kianjai/7566, Kianjai/kianjai/7568, Kianjai/kianjai/7569 after his death and the 4th respondent be compelled to correct the registers and revert all the properties back to the name of the deceased M’Imaingi Thirungu as at 18th April, 1979 for purposes of subdivision and distribution among the beneficiaries of the estate.
 5. The Honorable Court to mete an appropriate sanction and punishment to the 1st respondent Justus Kirathe M’Imaingi for the offence of intermeddling with the deceased estate contrary to section 45 of the *Law of Succession Act*.
 6. Costs of this summons be provided for.
3. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of Ciabaibaya M’Imaingi, sworn on even date. She avers she is one of the proposed administratrix of the estate and the widow to the deceased herein while the co-applicants and the 1st respondent are her children. Although no letters of administration have been taken in respect to this estate, the 1st respondent has been working clandestinely and in cahoots with the 2nd to 4th respondents to intermeddle with the estate of the deceased. When she got married to the deceased, they built their matrimonial home on Kianjai/kianjai/3758 measuring 3.02 acres and most of their children also built their homes there. Unknown to her and to her utter shock and dismay, she learnt recently that the 1st respondent subdivided the said land into Kianjai/kianjai/3758, Kianjai/kianjai/7564 And Kianjai/kianjai/7565 and processed title deeds in his name without her consent or that of her other children and without the authority of the court. Surprisingly, the 1st respondent has now fenced off the illegally subdivided properties which are her matrimonial home including her husband’s grave yard and now



wants to grab the land. It is intriguing how all these illegal and unlawful acts are being perpetrated by the 2nd-5th respondents. In fact, when the 1st respondent was erecting the fence, the 2nd-4th respondents personally came to provide him with full security and supervise the erection of the fence. The 1st-4th respondents have persistently harassed her in her home, as she cannot live in peace, because the 1st respondent has fenced off her home, barricaded and locked the entrance thereto making it inaccessible. The said acts and omissions of the 1st-4th respondents have caused her psychological torture and mental anguish and with her old age, she cannot withstand such harassment and intimidation from her child sanctioned by the authorities who should protect her and her husband's properties unless they want her to die before her time. The 1st respondent is also working in cahoots with the other respondents to process title deeds for the remainder of the deceased properties without their knowledge. It is for those reasons that she prays for the application to be allowed in order to preserve the estate for equitable distribution in accordance with the law.

4. The 1st respondent opposed the application vide his replying affidavit sworn on February 22, 2022. He denies intermeddling with the estate and avers that the 1st applicant caused LR No Meru/Kianjai/750 to be mutated into LR Nos Kianjai/kianjai/7564, 7564, 7566, 3657, 4359, 7567, 7507, 750, 4359, 3758, 599, 7565, 750, 1407, 7568 & 7569. He accuses the 1st applicant of failing to attach evidence to show that the mentioned properties indeed belonged to the deceased and whether he had not distributed them prior to his death. He was never invited to the chief's letter when the introductory letter dated 20/1/2021 was being written and his parcels of land LR Nos Kianjai/kianjai/7564 & 7566 are separated by LR Nos Kianjai/kianjai/7565 belonging to his late brother Julius Mutwiri M'Maingi who has another parcel namely LR No Tigania/kianjai/599. LR No Kianjai/kianjai/750 is still registered in the name of the deceased and the deceased herein passed on before the subject parcels could pass out to his children. The 1st applicant lives in a distinct portion not in any way affected by the portions belonging to him and she can access her land without passing through his land. He urges the court to order investigations to be undertaken by the DCI to ascertain how the subject parcels in the names of the applicants passed on to them. He urges the court to dismiss the application with costs, as it is a sham, untenable and actuated by malice and bad faith.

Submissions

5. The applicants cite *East African Industries v Trufoods* (1972) EA 420 and *Giella v Cassman Brown & Co. Ltd* (1973) EA 358 which set out the guiding principles for the grant of interlocutory injunction. They urge that the respondents have been dealing with the estate of the deceased without the proper authorization of the court, which amounts to intermeddling, and cite *Benson Mutuma Muriungi v C.E.O Kenya Police Sacco & Anor* (2016) eKLR, *Joseph Siro Mosioma v Housing Financing Company of Kenya Limited & 3 Others* (2008) eKLR and *Veronica Njoki Wakagoto (Deceased)* (2013) eKLR. They urge that they will suffer greater harm and irreparable injury if the orders sought are not granted, and cite *Amir Suleiman v Amboseli Resort Limited* (2004) eKLR.
6. The 1st respondent filed chamber summons under certificate of urgency dated April 5, 2023 pursuant to section 47 of the *Law of Succession Act*, Rule 73 of the Probate & Administration Rules, Order 45 of the Civil Procedure Rules and Article 159 of *the Constitution*, seeking that:
 1. Spent
 2. Pending hearing and determination of this application interpartes the honorable Court be pleased to review its orders directing that the hearing of the application dated 30.9.2021 has been closed and a ruling on the same would be delivered on the 28.04.2023.



3. The Court be pleased to arrest its ruling in this matter slated for delivery on 28.04.2023 pending interpartes hearing and determination of this application and the one dated 30.9.2021.
 4. Pending hearing and determination of this application and the application dated 30.9.2021, this honorable court be pleased to order a visit to the suit land parcels (kianjai/kianjai/7564, Kianjai/kianjai/7565, Kianjai/kianjai/3758) to establish who is in occupation, possession and developed thereof.
 5. The honorable court be and is hereby pleased to issue a temporary order of injunction restraining the petitioners/respondents, their relatives, their agents or anyone else authorized by them from trespassing into, interfering with, entering into, or in any unlawful manner from interfering with the applicant's peaceful and quiet occupation, possession, user and developments on the land parcels Kianjai/kianjai/7564 and Kianjai/kianjai/7566 pending hearing and determination of this application and the application dated 30.9.2021 and subsequent determination of this succession cause.
 6. The honorable court be and is hereby pleased to strike out the application dated September 30, 2021 as the same is incompetent, frivolous, an abuse of court process, and without merit in law.
 7. The court do grant the applicant leave to file fresh replying affidavit to the application dated September 30, 2021 to include all issues affecting the matters herein.
 8. The honorable court be pleased to cite the petitioners/respondents for contempt of court orders issued on October 12, 2021 and the petitioners be committed to civil jail.
 9. Costs of this application be in the cause.
7. The application is supported by the grounds on the face of it and the supporting affidavit of the 1st respondent sworn on even date. He avers that he is the registered owner of land parcel Nos Kianjai/kianjai/7564 And Kianjai/kianjai/7566. He has lived on the suit parcels all his life without any objection by the applicants. The applicants hired goons to forcefully break the barbed wire around his land, a matter he reported to his former advocate, who did not include that fact in his replying affidavit. Despite instructing his former advocate to safeguard him from the unlawful harassment by the applicants, he has learnt that nothing was done, and he is apprehensive that he has been deprived of his right to a fair representation and hearing. He prays for leave to file a fresh replying affidavit to the application of September 30, 2021 to reflect his full instructions and issues relating to the subject matters herein, to enable the court determine the same on merit by considering all the facts. He also prays for the applicants to be restrained from interfering with his occupation, possession and user of his parcels of land pending the hearing and determination of this cause. He prays for the applicants to be cited for contempt of court orders of October 12, 2021 and committed to civil jail, because they forced themselves into his land and destroyed his property. According to him, the application dated September 30, 2021 is incompetent in law for including his properties in this cause while the issues raised therein are a reserve of the ELC Court, which jurisdiction this court lacks. He avers that unless the prayers sought are granted, he will be deprived of his land, rendered homeless, destitute and therefore suffer irreparable loss.



8. The 1st respondent swore a supplementary affidavit on 3/5/2023 in further support of his application.
9. The 1st applicant swore a replying affidavit on 28/4/2023 in opposition to the application. She avers that when the court issued the interim orders on 12/10/2021 of status quo, it granted the 1st respondent leave of 21 days to file a replying affidavit, which was duly filed on February 22, 2022. The court then directed the parties to file their respective submissions, which the 1st respondent neglected to file despite having been given numerous opportunities to do so. The 1st respondent cannot now claim that he was deprived of his right to be heard, because he was accommodated on numerous occasions by the court but he failed to comply. The allegation by the 1st respondent that he is the registered owner of Kianjai/Kianjai/7564 and Kianjai/Kianjai/7566 is untenable as the said registrations were obtained fraudulently. She denies disobeying any court order to warrant contempt of court proceedings or any punishment to be meted against her and the other applicants. She urges the court to dismiss the 1st respondent's application and proceed to deliver its ruling on the application dated September 30, 2021.

Analysis and determination

10. The court has analyzed the applications, the replying affidavits and the supplementary affidavit together with the submissions and authorities cited, and considers the issue for determination to be whether the orders sought therein should issue.
11. On October 12, 2021, this court issued orders that,
 - “1. Application dated September 30, 2021 is certified urgent in view of the injunctive reliefs sought.
 2. Application to be served on the Respondents for hearing/directions on October 18, 2021 before court
 3. Status quo to be maintained until then.”
12. Come October 18, 2021, counsel for the 1st respondent told court that,

“I am yet to file any responses because I was only instructed last Saturday. I need time of 21 days to file responses to the application. I have no problem with the interim orders being extended.”

The court then directed that,

“The interim orders issued on October 12, 2021 are hereby extended to enable Applicants get to their homes.”
13. On February 22, 2022, the 1st respondent had not yet filed his response. His counsel told court that,

“We had delays in filing our response because our client suffered a stroke and getting instructions was difficult because he became incoherent. We have filed the response today.”

The court then ruled that,

“...the Replying Affidavit by the 1st Respondent is deemed properly on record and matter stood over to 6.7.2021 for hearing...Interim orders extended till then.”
14. This court notes that the 1st respondent was indeed accorded an ample opportunity to file his response to the application of September 30, 2021. He belatedly filed the said replying affidavit on February 22,



2022, and the court, in the interest of justice deemed the same to be properly on record. He cannot now be heard to say that he was condemned unheard and his right to a fair hearing was breached.

15. Besides, the 1st respondent has had an opportunity to swear a supplementary affidavit filed on 3/5/2023, which averments this court has duly considered, and the ruling sought to be arrested has not yet been delivered. The 1st applicant has failed to prove how the applicants have disobeyed the court order of October 12, 2021 to warrant their committal to civil jail. The court finds that his application dated April 5, 2023 is unmerited and it is hereby dismissed.
16. For the application dated September 30, 2021, the applicants contend that the 1st respondent fraudulently subdivided some of the estate properties and caused them to be registered in his name without any legal authority to do so. The 1st respondent affirms that the said properties are his and there is no evidence that the deceased ever owned them.
17. The copies of green cards for Kianjai/kianjai/7564 and Kianjai/kianjai/7566 show that the same are registered in the name of the 1st respondent. There is evidence that Kianjai/kianjai/3758 is registered in the name of the 1st applicant, Kianjai/kianjai/kianjai/7569 is in the name of Mary Kajuju, Kianjai/kianjai/7568 is in the name of Priscilla Maingi Gakou and Tigania/kianjai/599 and Kianjai/kianjai/7565 and 7567 are in the names of Julius Mutwiri Maingi. The only asset registered in the name of the deceased herein according to the copy of green card on record is Meru/kianjai/750. All the other properties listed by the 1st applicant have since been transferred to other persons and title deeds issued. Since the ownership of all the properties listed by the 1st applicant in her application save for Meru/kianjai/750 are currently in the names of persons other than the deceased herein, this court does not have jurisdiction to deal with them and the challenge whether their acquisition was fraudulent or not must be addressed in a distinct suit elsewhere.
18. It has not been shown that the 1st respondent has been interfering and/or intermeddling with the estate property which is Kianjai/kianjai/750 and therefore the orders sought by the applicants cannot issue.

Orders

19. Accordingly, for the reasons set out above, this Court makes the following orders:
 1. The application dated April 5, 2023 seeking to arrest the ruling of the Court on the application dated September 30, 2021 is without merit and it is dismissed.
 2. The application dated September 30, 2021 is without merit and it is dismissed.
20. Each party will meet their own costs.

Order accordingly.

DATED AND DELIVERED THIS 31ST DAY OF MAY, 2023.

EDWARD M. MURIITHI

JUDGE

