



**In re Estate of Mary Njoki Zakaria (Deceased) (Succession Cause
1828 of 2010) [2022] KEHC 10055 (KLR) (Family) (25 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 10055 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 1828 OF 2010

AO MUCHELULE, J

JULY 25, 2022

IN THE MATTER OF THE ESTATE OF MARY NJOKI ZAKARIA (DECEASED)

BETWEEN

REHEMA WAIRIMU RAMADHAN APPLICANT

AND

REGINA WAITHERA KIRUI RESPONDENT

RULING

1. The notice of motion dated December 3, 2021 seeks the following orders:-
 - “ 1) That the application be certified as urgent and the same be heard *ex parte* in the first instance;
 - 2) That the officer commanding the Muthangari Police Station be and is hereby ordered to provide an adequate number of armed uniformed policemen and policewomen to accompany Mrs Rehema Wairimu Ramadhan, the applicant herein, as she enforces the rulings of this honourable court dated July 27, 2020 and October 19, 2021 and the ensuing orders upholding her proprietorship rights over property title number Dagoretti/Riruta/3455 (and all its subdivisions including Dagoretti/Riruta/6691) by evicting the respondent by herself, her servants or agents or otherwise howsoever from the stated property, for the purpose of maintaining law and order; and
 - 3) That the costs be provided for.”
2. The case of the applicant Rehema Wairimu Ramadhan is that pursuant to the confirmation of the grant dated November 13, 2013, she became the lawful registered owner of Dagoretti/Riruta 3455



(and all its subdivisions including Dagoretti/Riruta/6691 and Dagoretti/Riruta/6692). Dagoretti/Riruta/6691 is developed and has paying tenants. She wrote to the tenants advising them that she was the owner of the property following the certificate of confirmation and that she intended to exercise her rights of ownership over the property. She sought that they vacate the premises. However, the respondent Regina Waithera Kirui wrote to them to ignore the notice. When the applicant sought the assistance of the police they asked that she seeks a court order to evict the tenants. Hence the application.

3. The respondent filed a replying affidavit to state that the application was incompetent and an abuse of the process of the court as the court lacked jurisdiction to order the eviction. Her case was that the distribution of the estate of the deceased is the subject of the appeal that was preferred in the Court of Appeal in Civil Appeal No E422 of 2020, and that there is an application for injunction pending before that court. Therefore, she continued, the application is subjudice, and the court is *funtus officio*.
4. The history of the case is that the deceased Mary Njoki Zacharia died intestate on October 15, 2009. She left several children, among them the applicant and the respondent. A joint grant of letters of administration intestate was issued to the applicant, the respondent and their sibling Peter Kamau. After some dispute among the beneficiaries, on November 13, 2013 a consent was recorded by all the beneficiaries on how the estate of the deceased was to be shared. The applicant was given Dagoretti/Riruta/3455, and she was to share Dagoretti/Riruta/5221 with her sister Esther Nyokabi equally. The property given to the applicant has rental units. They are specifically on the subdivision Dagoretti/Riruta/6691. The respondent has variously claimed that she is the one who put up the rental units which now have her tenants. Her claim has been rejected by this court in previous rulings. As matters stand, the property in question belongs to the applicant. There is no stay granted against the distribution of the estate of the deceased.
5. It is clear to me that this succession court has the jurisdiction to make sure that its orders and decrees are executed. The certificate of confirmation that was issued by the court has to be implemented and the applicant put into possession of Dagoretti/Riruta/3455 (and its subdivisions Dagoretti/6691 and 6692). These are the reasons why I allow the application with costs.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY 2022.

A.O. MUCHELULE

JUDGE

