



REPUBLIC OF KENYA



In re Estate of Jamric Kuuna alias Njuguna Chege (Deceased) (Succession Cause 19 of 2020) [2022] KEHC 12663 (KLR) (29 August 2022) (Ruling)

Neutral citation: [2022] KEHC 12663 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
SUCCESSION CAUSE 19 OF 2020
K KIMONDO, J
AUGUST 29, 2022**

BETWEEN

MWANGI NJOROGE MWANGI APPLICANT

AND

ROSE MUTHONI NJUGUNA RESPONDENT

AND

PETER NJOROGE GATHOGO & 18 OTHERS INTERESTED PARTY

RULING

1. On December 23, 2020, the applicant filed two separate applications all dated December 18, 2020. The first is a Summons for revocation of grant issued by the subordinate court at Kigumo on February 19, 2015 and confirmed on December 5, 2019.
2. The second is a Notice of Motion seeking various conservatory orders or stay of execution of the certificate of confirmation of grant; and, also praying for transfer of the lower court file to the High Court.
3. The filing of both applications under a certificate of urgency on the same date and which also bear a similar date has led to considerable confusion. For instance, when the matter came up *ex parte* during the High Court Recess on December 30, 2020, the High Court sitting at Kerugoya (Mulwa J) ordered:

Prayer 1 is granted. Application dated December 18, 2020 shall be served to the respondents and interested parties for hearing interparties on the January 21, 2021 at Murang'a High Court.
4. I have not seen a copy of the extracted order, but granted what I have stated, I presume the learned Judge granted Prayer 1 in the Notice of Motion brought under certificate of urgency seeking that the application “be certified urgent and heard *ex parte* in the first instance”.



5. On April 28, 2021, learned counsel for both parties consented that the “application dated December 18, 2020 be heard by way of written submissions”.
6. On July 19, 2022, both learned counsel informed the court that they were relying wholly on their submissions filed on May 21, 2021 and July 6, 2022 respectively and sought a ruling date.
7. Which brings me to the predicament I faced when I retired to write the ruling: The applicant’s written submissions are devoted wholly to prayers 4, 5, 6, 7 and 8 of the Notice of Motion dated December 18, 2020. The respondents’ submissions on the other hand deal exclusively with the Summons for revocation of grant dated December 18, 2020.
8. Proceeding with a determination will cause serious injustice to either party as each of them will not have been heard on either of the two motions. Like I stated at the beginning, the quagmire has been engendered by filing of two separate applications which are all dated December 18, 2020.
9. To avoid the ends of justice from being defeated, and noting that I am proceeding on transfer, I direct that this file be placed before any judge on a date I shall now grant for fresh directions on the hearing of the two applications.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG’A THIS 29TH DAY OF AUGUST 2022.

KANYI KIMONDO

JUDGE

Preliminary Ruling read in open court in the presence of:

Mr. Mbue Ndegwa holding brief for Mr. Pekke for the applicant instructed by Musungu Pekke & Company Advocates.

Mr. Mbutia for the respondents instructed by J. N. Mbutia & Company Advocates.

Ms. Susan Waiganjo, Court Assistant.

