



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

(CORAM: CHERERE-J)

SUCCESSION CAUSE NO. 259 OF 1994

IN THE MATTER OF ESTATE OF M'KWARIA MBUKIA

ALIAS KWARIA KIUJO MBUKIA - (DECEASED)

AND

IN THE MATTER OF APPLICATION FOR EVICTION

BETWEEN

JULIUS KATHIA KIUJO.....ADMINISTRATOR/APPLICANT

AND

M'MWARANIA KWARIA.....OBJECTOR

FRIDAH NKATHA.....BENEFICIARY

RULING

Background

1. By a ruling dated 27th November, 2019, the court made the following order:

- 1) Bernard Mwarania was granted Abogeta/U-Chune/541 during the lifetime of the deceased.
- 2) Sons of the deceased were granted LR. Nkuene/Mikumbune/74
- 3) Deceased's estate shall be distributed as follows;

L.R MIKUMBUNE/74 (7.275 ACRES

i. 6.5475 Acres as per the divided portions to:

- a) Morris KirukiM'Kwaria
- b) Francis Riungu (granted to Alice Nyokora)
- c) Douglas Kinyuru
- d) Julius KathiaKiunjo
- e) Patrick Mwiti

f) Paul Mwiriungu

g) Jackson Muriungu (to be shared amongst Stella Kagendo and Kelvin Muthaura)

h) Erastus Kimathi

ii. 0.725 Acres in equal shares to:

i) Thomas Kinyua

j) Esther Karai

k) Phylis Mugare

l) Florence Nyegeria (deceased) represented by Fridah Nkatha

m) Lydia Gatura

n) Florence Gaceri

ABOGETA/L.CHURE/541

Benard M' Mwarania - whole

NKUENE/L. MIKUMBUNE/498

a) ½ of the share to Cyprian Kirimi

b) ½ in equal shares to;

(i) Florence Nyegeria (deceased) represented by Fridah Nkatha

(ii) Esther Karai

(iii) Phylis Mugare

(iv) Lydia Gatura

(v) Florence Gaceri.

NKUENE/L.MIKUMBUNE/483

(i) ½ share to Julius Kaitho Kiujo

(ii) ½ share to ;

a) Morris KirukiM'Kwaria

b) Francis Riungu

c) Douglas Kinyuru

d) Julius KathiaKiunjo

e) Patrick MwitiTo be shared Equally

f) Paul Mwiriungu

g) Jackson Muriungu(to be shared amongst Stella Kagendo and Kelvin Muthaura)

h) Erastus Kimathi

i) Thomas Kinyua

2. Subsequently, a Certificate of Confirmation of Grant dated 27.11.2019, was issued in conformity with the ordered mode of distribution.

Summons

3. By summons dated 06.10.2020 filed on 25.01.2021, JULIUS KATHIA KIUJO (*Administrator/ Applicant*) seeks orders THAT:

1) Execution do issue against the Objector by way of eviction from land parcel LR. Nkuene/Mikumbune/74

2) OCS NKUBU police Station do provide security for the eviction of objector and put the administrators of the estate of M'KWARIA MBUKIA ALIAS KWARIA KIUJO MBUKIA (DECEASED) into possession of the said land

3) Costs

4. The application is based on the ground that the Objector has declined to vacate LR/Nkuene/L.Mikumbune/74 as ordered by the court on 9th August 2018.

5. The Objector by his affidavits sworn on 03.03.2021 and 30.04.2021 opposes the application on the grounds among others that he is sick, that Applicant has no locus to apply for eviction and also on the ground that he is talking to some beneficiaries to exchange their share on the suit land with the share distributed to him.

6. Fridah Nkatha and Esther Karai Muthinja (*beneficiaries*) by their replying affidavit sworn on 08.03.2021 similarly oppose the application on the ground that the Objector is sick and that it would be inhuman and oppressive to have him evicted.

Analysis and determination

7. I have considered the application in the light of the affidavits on record and submissions filed on behalf of the Applicant and I have deduced two issues for determination:

1) **Whether the Applicant has locus to seek the orders of eviction against the Objector.**

2) **Whether the order of eviction is merited**

i. Whether the Applicant has locus to seek the orders of eviction against the Objector.

8. It is not disputed that the Objector was granted 30 days from 09th August 2018 to vacate LR/Nkuene/L.Mikumbune/74. It is now 2 years and 9 months since the order was made but the Objector has not complied in total disobedience of the court order.

9. Section 83 of the Law of Succession Act which deals with the Duties of personal representatives which include

(g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration

10. The fact that the Objector has declined to vacate LR/Nkuene/L.Mikumbune/74 no doubt stands in the way of completing the administration of the estate which ought to have been completed within 6 months from 27th November, 2019 when the grant was confirmed.

11. Consequently, I find that Applicant has locus to seek the order of eviction against the Objector.

ii. Whether the order of eviction is merited

12. Disobedience to court orders has negative consequences and courts frown upon such conduct.

13. Ibrahim J as he then was stated as follows in Econet Wireless Kenya Ltd vs. Minister for Information & Communication of Kenya & Another [2005] 1 KLR 828: -

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our Courts are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a Court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void”.

14. The Court of Appeal confirmed this position in Wildlife Lodges Ltd vs. County Council of Narok and Another [2005] 2 EA 344 (HCK) where it expressed itself as follows:

“It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a Court of competent jurisdiction to obey it until that order was discharged, and disobedience of such an order would, as a general rule, result in the person disobeying it being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he had purged his contempt. A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it...It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid – whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed...If there is a misapprehension in the minds of the defendants as to the reasonable meaning of the order, then the expectation of them is that they would have made an application to the court for the resolution of any misunderstanding and this would have been the lawful course...In cases of alleged contempt, the breach for which the alleged contemnor is cited must not only be precisely defined but also proved to the standard which is higher than proof on a balance of probabilities but not as high as proof beyond reasonable doubt...The inherent social limitations afflicting most people in a developing country such as Kenya have the tendency to restrict access to the modern institutions of governance, and more particularly to the judiciary which is professionally run, on the basis of complex procedures and rules of law. Yet, this same Judiciary is generally viewed as the impartial purveyor of justice, and the guarantor of an even playing ground for all, a perception which ought to be strengthened, through genuine respect for the courts of justice, and through compliance with their orders. Consistent obedience to court orders is required, and parties should not take it upon themselves to decide on their own which court orders are to be obeyed and which ones overlooked, in the supposition that this oversight will not impede the process of justice...Justice dictates even-handedness between the claims of parties; and if it be the case that the plaintiff/applicant has not been accorded a level playing ground for the realization of its economic activities, a matter that of course can only be established through evidence in the main suit, then the court ought to provide relief, by applying the established principles of law, one of these being the law of contempt...An ex parte order by the court is a valid order like any other and to obey orders of the court is to obey orders made both ex parte and inter partes since the Court by section 60 of the Constitution is the repository of unlimited first instance jurisdiction, and in this capacity it may make ex parte orders where, after a careful and impartial consideration, it is convinced that issuance of such an order is just and equitable. There is nothing potentially oppressive in an ex parte order, since such an order stands open to be set aside by simple application, before the very same court... Where a party considers an ex parte order to cause him undue hardship, simple application will create an opportunity for an appropriate variation to be effected thereto; and therefore there will be no excuse for a party to disobey a court order merely on the grounds that it had been made ex parte and this argument will not avail either the first or the second defendant”.

15. Court orders are not made in vain. The Court does not, and ought not to be seen to make orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of the people.

16. The contention by the Objector that he is sick and is talking to some beneficiaries to exchange their share on the suit land with the share distributed to him does not afford him an opportunity to be contemptuous of a lawful court order. The court had allowed him to vacate voluntarily but in view of his disobedience, this court has to alternative but to protect its integrity by firmly dealing with him in the manner sought by the Applicant.

17. From the foregoing analysis, I have come to the conclusion that the orders sought in the summons dated 06.10.2020 filed on 25.01.2021 are merited.

18. It is therefore hereby ordered:

- 1) Execution do issue against the Objector by way of eviction from land parcel LR. Nkuene/Mikumbune/74
- 2) OCS NKUBU police Station do provide security for the eviction of objector and put the administrators of the estate of M'KWARIA MBUKIA ALIAS KWARIA KIUJO MBUKIA (DECEASED) into possession of the said land
- 3) It is further ordered that the Administrator does complete the administration of the estate within 60 days from today's date
- 4) Costs shall be borne by the Objector
- 5) Mention on 27th July, 2021 to confirm compliance with Order (1), (2) and (3) above

DELIVERED AT MERU THIS 20th DAY OF May 2021

T. W. CHERERE

JUDGE

In the presence of-

Court Assistant - Kinoti

For Administrator - Mr.Kiruai for M/s Kiautha Arithi & Co. Advocates

For Objector - N/A for M/s Gikunda Anampiu & Co. Advocates

Applicant - Ms. Atieno for M/s J.K.Ntarangwi & Co. Advocates