



REPUBLIC OF KENYA



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In re Wilfred Muriithi Kinyua (Applicant) (Environment & Land Miscellaneous Case E135 of 2023) [2023] KEELC 20089 (KLR) (26 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20089 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE E135 OF 2023
MD MWANGI, J
SEPTEMBER 26, 2023

(In respect of the Ex parte Notice of Motion application dated 25th May, 2023 seeking vesting orders over the various properties bequeathed to the Applicant)

RULING

Background

1. The Applicant states that he is the Administrator and a beneficiary of the Estate of Merina Vendana alias Emilia Alfano Vendana – deceased vide Nairobi High Court Succession Cause No E941 of 2021, (in the matters of the Estate of Christiana Merina Vendana alias Emilia Alfano Vendana. The Applicant avers that he was issued with a grant of probate with written will on October 4, 2021. The grant was confirmed on May 16, 2022 pursuant to the provisions of Section 71 of the *Law of Succession Act*. It was ordered that the Estate of the deceased be distributed in accordance with the written will of the deceased dated January 5, 2004.
2. Under Clause 4 of the said will, the deceased gave, devised and bequeathed to the Applicant herein Wilfred Muriithi Kinyua, ID Card No 208XXXX2, the properties listed thereunder being parcels of Land in Kenya in Nairobi, Nanyuki, Laikipia and Mombasa including Malindi and Diani, to hold in trust for himself as follows:

Land Registration Numbers LR No 6725/124, 27/34, 12826, 12442, 4894/107, 4894/90, 4894/43, 209/6002/7, 209/73/6, 209/73/1, 209/74/3, 209/74/6, 209/74/2, 209/74/7/1, 209/76/5, 1870/1/131, 1870/VIII/118, 209/1972, 209/1688, 209/64/11, 1870/111/159, 209/4501, 209/4499, 209/4496, 209/7454, 5/68, 3734/485, 3734/486, 3734/798, 3734/809, 3734/810, 3734/617, 3734/46, 3734/28, 3734/29, 3734/30, 330/541, 1055/6, 1055/55, 1055/48, 1055/47, 1058/53, 1058/54, 1159/339, 1159/98, 1159/99, 1158/76, 1159/79, 1159/78, 1159/5, 1055/14, 1055/17, 1008/16, 1008/77(154/75), 1008/6, 1008/55, 1008/25, 1008/40, 1008/61, 1159/88, 195/13, 193/7, 11320/3, 4441/4, 7533/5, 194/47, 194/26, 194/27, 194/24, 194/23, 7336/76, 1055/3, 1055/29, 12257, 1160/265, 1160/308, 1160/312, 1160/313, 1160/283, 2327/151, 2327/152, 2327/118, 2327/119, 5806/1, 3591/20, 3591/19, 11829, 5809/1, 5809/3, 2250/102, 2250/7, 18477/7336/31, 7336/46, 5809/6, 2/308, 2/309, 1/468, 209/4484, 2/268, 2/244, 2/343, 2/458/2/1, 1/650, 1/204,



330/420, 5/72, 7380/2, 7380/5, 14695/1, 14695/2, 14695/3, 14695/4, 14695/5, 14695/6, 5830/8, 5830/9, 5830/11, 5830/12, 4853/3, 1870/111/71, 1870/111/118, 1870/11/136, 1870/11/137, 6967/2, 6967/3, 6967/4, 6967/5, 6967/6, 6967/7, 6967/8, 6967/9, 1862, 209/12541, 3734/292, 3934/515, 162(Malindi Polcino Oasis), MN/1/1893, MN/1/1310/1, MN/1/2531, MN/1/2525, MN/1/2924, MN/2925, MN/1/1229, MN/1/1225, MN/1/1229, MN/1/6051, MN/1/1145.

3. On July 24, 2023, this Court requested for the Nairobi High Court Succession Cause No E941 of 2021 to confirm the position. The file was availed and the Court confirms the issuance of the grant and its confirmation on May 15, 2022.

Basis of the Application

4. The Application is premised on the grounds on the face of it and on the Supporting Affidavit of Wilfred Muriithi Kinyua deposed on May 25, 2023.
5. The Applicant deposes that he was issued with a grant of probate by the High Court on October 4, 2021. The grant was subsequently confirmed on May 16, 2022. However, since the confirmation of the grant, he has made countless visits to the respective Land Registries with a view to getting copies of title documents but has been told that the files cannot be found.
6. The Applicant affirms that he is in possession of all the properties listed in the will other than a few which have been encroached by land grabbers and fraudsters.
7. The Applicant alleges that he lost the documents of title sometimes in the year 2012 when his brief case was snatched and stolen at a bus stage in Nairobi. He allegedly reported the theft at Kamukunji Police Station where he was issued with a Police Abstract which he has marked as WMK 7.
8. The Applicant pleads for a vesting order to assist the Land Registrars reconstruct Land files and registers to enable them retitle the properties transmitted to him.

Determination

9. As already stated above, the Court confirmed the issuance of the grant in favour of the Applicant by the Nairobi High Court Family Division after calling for the file (High Court Succession Cause No E941 of 2021).
10. Under the provisions of Section 61 of the [Land Registration Act](#), and Section 50 of the [Land Act](#) (where applicable), a confirmed grant is adequate to effect a transfer by transmission. Section 61(2) of the [Land Registration Act](#) particularly provides that:

' Upon confirmation of a grant, and on production of the grant, the Registrar may, without requiring the personal representative to be registered, register by transmission –

 - a. Any transfer by the personal representative; and
 - b. Any Surrender of a lease of discharge of a charge by personal representative.'
11. A grant under the Law means the grant of probate of a Will, the grant of Letters of Administration of the estate or the grant of summary administration of the estate in favour or issued by the Public Trustee as the case may be, of the deceased proprietor.
12. The Applicant in this case however argues that he is unable to transmit the bequeathed properties to his name because he does not have the original title documents and further that he has been informed



- that the respective parcel files cannot be found. He suspects underhand dealings meant to frustrate him or meant to defraud him of the properties.
13. The Applicant has invoked the inherent powers of this Court in the interest of justice. His application is expressed to have been brought under the provisions of Sections 1A, 1B, 3 & 3A of the [Civil Procedure Act](#).
 14. The question that this Court must address first and foremost is whether it has the mandate/jurisdiction to issue the vesting order as sought by the Applicant herein.
 15. The Black's Law Dictionary, 11th Edition, defines the term 'Vest' as, 'to confer ownership (of property) on a person.'
 16. In the context of the above definition, the Applicant herein seeks to be conferred with the ownership of the properties listed. As already noted above, the Applicant has already been declared by the High Court vide High Court Succession Cause No E941 of 2021 as the Administrator and Sole beneficiary of the properties listed. In other words, the confirmation of the grant has already vested upon the Applicant ownership of the said properties.
 17. I must re-emphasize that under Section 61(2) of the [Land Registration Act](#), no vesting order is required to effect a transfer of title by way of transmission. The confirmation of grant is sufficient.
 18. In the case of [the Estate of the late Kabuta Kamara Nguuro alias Pharis Njegegu \(deceased\) \(2002\) eKLR](#), the Court cited with approval the decision of Rose Wanjiku Kuria vs Ng'ang'a Mugwe (2003) eKLR where the Court held that by virtue of Section 79 of the [Law of Succession Act](#), the administrator gets all the property of the deceased vested in him.
 19. At Paragraph 12 of his supporting affidavit, the Applicant alleges that since the confirmation of grant on May 16, 2022, he has made countless visits to the respective Land Registries with the aim of getting copies of various title documents but has been advised that the respective files cannot be found. He refers to an annexure marked WMK 8 – supposedly the applications or copies. The annexure is however not attached to the affidavit filed in court.
 20. The Applicant asserts that he has been advised by his Advocate that a vesting order by this Court will assist the Land Registrars to reconstruct Land files and registers to enable them re-title his properties as transmitted to him by the Family Division of the High Court.
 21. What I understand the Applicant to be saying in other words is that he has been unable to complete the administration of the estate of the late Christiana Merina Vendana in accordance with the certificate of confirmation of grant issued to him. That is why he seeks the assistance of this Court. However, this Court is not and cannot be the proper court to assist him in the administration of the estate.
 22. Section 83(g) of the [Law of Succession Act](#) requires and mandates administrators of an Estate to within six (6) months of confirmation of the grant or such longer period as the Court may allow, to complete the administration of the estate and to produce to the court a full and accurate account of the completed administration.
 23. Where an administrator is frustrated or prevented from completing the administration as alleged in this case, he should go back to the court that issued and confirmed the grant for assistance. Every Court has the power to enforce its orders/decrees. The Succession Court has the jurisdiction under Section 47 of the [Law of Succession Act](#) to, 'entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.'



24. Further, Rule 73 of the *Probate and Administration Rules* gives the Succession Court inherent powers to make such orders as may be necessary to meet the ends of justice or to prevent abuse of the court process.
25. In the case of the Estate of the Late Kabuta Kamaara Nguuro alias Pharis Njegegu (Supra), the Court further observed that it had, being a Succession Court, '... ample powers donated to it by Section 47 of the *law of Succession Act* and Rule 73 of the Probate and Administration Rules to resort to, in order to meet the ends of justice.'
26. Accordingly, my finding is that this court has neither the legal basis nor the jurisdiction to grant the vesting order sought by the Applicant. This Court, if it were to issue the orders sought, will be assuming the powers of the Succession Court. The Applicant has in fact not cited any provision in our Land Laws to justify the grant of the orders sought. The Application is merely premised on the inherent powers of this Court.
27. The inherent power of the court has been described as a residual intrinsic authority which the Court may resort to in order to put right that which would otherwise be an injustice. (*Kenya Power & Lighting Company Ltd -vs- Benzere Holdings Ltd t/a Wycoco Paints [2016] eKLR*). However, and as observed by the Court in the case of National Union of Metal Workers of South Africa & Others vs Fry's Metal (Pty) Ltd, the Court's inherent powers do not extend to the assumption of jurisdiction not conferred upon the Court by Statute.
28. Accordingly, I dismiss the application herein with no orders as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2023.

M. D. MWANGI

JUDGE

In the virtual presence of:

Mr. Nyaga for the Applicant,

