



**Nkanata v Kanugu (Environment and Land Appeal
E007 of 2023) [2025] KEELC 5099 (KLR) (9 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5099 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT AND LAND APPEAL E007 OF 2023**

LN MBUGUA, J

JULY 9, 2025

BETWEEN

EDWARD BUNDI NKANATA APPELLANT

AND

ESTHER KANUGU RESPONDENT

RULING

1. This is a concluded matter, judgment having been delivered on 7.12.2023. The appellant has filed an application dated 9.12.2024 seeking the following orders;
 - “a) That this honourable court be pleased to compel the respondent to comply with the orders comprised in the judgment that was delivered on the 7th day of December 2023 within fifteen (15) days and in default a warrant of arrest against her be issued and be brought to court to show cause why she has failed to comply with the said orders.
 - b) That this court be pleased to appoint either Marite Agency Or Camu Agency or any other agent to start collecting all rents that are being derived from the suit property known as Title No. Narumoru/Block 1/Ragati/867 in accordance with this court’s judgment and thereafter to be kept in an interest earning Bank Account to be opened in the joint names of the advocates for the appellant/applicant and the respondent as was ordered by this court.
 - c) That in the alternative and without prejudice to the foregoing prayers, the court do order and direct the appellant/applicant to engage the services of the County Surveyor to survey and subdivide the suit property into two equal portions under the supervision and superintendence of the OCS Nanyuki Police Station to ensure peace and security.



d) That the costs of this application be provided for”.

2. The application is premised on grounds set out on the face of the application and on the supporting affidavit of the appellant. He contends that the respondent has failed to take out letters of administration for the estate of Julius Kaaria, that he continues to collect the rent from the suit premises and has refused the appellant to access the premises. Thus the appellant continues to suffer immense prejudice due to the disobedience of the court order by the respondent.

3. No response was filed despite the fact that service was effected. Thus the application is unopposed. Should the court then grant the orders sought? In *Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others* [2018] eKLR, the supreme court of Kenya had this to say in relation to unopposed applications;

“As a court of Law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted”.

4. Guided by the above case law, I find that this court has a duty to look into the merits of the current application, even if the same is unopposed.

5. Going by the decision made by this court vide the judgment of 7.12.2023, it is apparent that the suit property was jointly owned by Jediel Nyaga Nkanata, the late father of the appellant and the late Julius Kaaria Ikiara. Apparently, the respondent is the one collecting rent from the suit premises in defiance of the judgment delivered herein.

6. At this juncture, it is important to extract a crucial portion of the court’s judgment which reads as follows;

“Once a legal representative of the estate of the late Julius Kaaria Ikiara has been appointed and the grant issued to the appellant is amended to specify that the beneficiaries of estate of the late Jediel Nkanata are only entitled to half share in the suit property, the beneficiaries of the estate of both the late Jediel Nkanata and the late Julius Ikiara can take steps to subdivide the suit property if that is feasible, or have the suit property sold and the proceeds shared out equally between the beneficiaries of the estates of the late Jediel Nkanata and the late Julius Ikiara. The beneficiaries of the two estates will be at liberty to buy out the other set of beneficiaries as may be agreed upon.

In the interest of justice, the rent derived from the suit property will be collected and deposited in an interest earning account to be opened in the joint names of the advocates for the appellant and the respondent within 14 days of the date of this judgment pending amendment of the certificate of confirmation of the grant relating to the Estate of the late Jediel Nkanata and appointment of the administrators for the estate of the late Julius Kaaria Ikiara”.

7. It is clear beyond peradventure that the issue of subdivision of the property or sale of the same cannot happen before the appointment of a legal administrator of the estate of Julius. Rightly so because any dealings with the property of a deceased person without a grant amounts to intermeddling with the estate. This far, the alternative prayer to survey and subdivide the land is unmerited.



8. Similarly, the issue of appointment of an agent to collect the rent post judgment may draw the court into fresh turbulence at the post judgment stage. Going by the orders given in the aforementioned judgment, I find that recourse lies in issuance of a notice to show cause to the respondent to explain why he has not complied with court's judgment.
9. In the circumstances, the application dated 9.12.2024 is partially allowed to the extent that a Notice to Show Cause is hereby issued to the Respondent to explain why she has failed to comply with court's judgment. The respondent is condemned to pay the costs of the application.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 9TH DAY OF JULY 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Omariba H/B for Bwononga for the Appellant

Kaimenyi for the Respondent

