



**Ngutiku & another v Mugambi (Environment and Land Appeal
28 of 2020) [2022] KEELC 13319 (KLR) (5 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13319 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL 28 OF 2020**

CK NZILI, J

OCTOBER 5, 2022

BETWEEN

TERETHA MUTIMBI NGUTIKU 1ST APPELLANT

GITONGA GIDEON MBURUGU 2ND APPELLANT

AND

**M'TWARUCHIU M'MUGAMBI ALIAS SILAS TUARUCHIU
MUGAMBI RESPONDENT**

RULING

1. By a ruling dated October 4, 2020, the court dismissed an application dated June 25, 2020 seeking for an inhibition order against L.R No. Kibirichia/Kibirichia/333 and stay of execution of the decision rendered on May 11, 2020 by the lower court. The basis of the dismissal was that the lower court simply dismissed the suit hence no positive order was in existence worthy staying.
2. On July 6, 2021 directions were taken to the effect that parties canvass the appeal by written submissions. Counsel for the respondent informed the court that her client had passed on and that the subject matter was distributed before his death so she had no client as it were. The court directed the matter to be mentioned on December 9, 2021 to confirm for the substitution.
3. While aware of this position, the applicant filed an application dated 16.8.20201 seeking for inhibition orders against the same subject land and to stop the intended respondent for an undisclosed purpose. The application was based on reasons on its foot and a supporting joint affidavit of Teretha Mutimbi Ngutiku and Gitonga Mburugu on August 16, 2021.
4. The grounds given were that the respondent passed on May 28, 2021 but the suit land has been transferred to the sons of the deceased named as the intended respondents. That there was need to maintain the *status quo*; no certificate of death had been filed in court, there was a prima facie case disclosed and that it was fair and just to grant the orders sought.



5. The applicant averred that they had established at the land registry that the intended respondents were transferred the land during the pendency of the appeal and therefore intended to and sought for leave to join them as legal representatives. They attached a search as annexure TMN “2” and stated that they were apprehensive that the said sons may subdivide and or sell the land rendering the appeal nugatory hence the need to preserve the subject property.
6. The court granted some interim orders on September 2, 2021 till the application was heard on October 11, 2021.
7. The matter came for hearing on October 26, 2021, the court granted the applicant more time to make the application to substitute. On December 9, 2021 more time was also sought by the applicant and the court granted another chance till 7.3.2022.
8. On 7.3.2022 once again the substitution had not been done and the court gave the applicant up to 10.5.2022; still there was no substitution. Counsel for the applicant promised to file an application within 14 days since it was stated that a limited grant ad litem had been obtained.
9. Up to the delivery of this ruling no application has been filed which is over three months after the indication to do so in 14 days.
10. The orders sought in this application are similar to the application dismissed through a ruling delivered on October 4, 2020. The applicant did not appeal against the said ruling or apply for its review based on the new evidence under order 45 of the Civil Procedure Rules and or section 80 of the Civil Procedure Act.
11. Annexure marked TMN “2” indicates the current owners of the suit land, are different from the deceased respondent. So, in essence there is no need to seek to obtain letters of administration.
12. All what the applicant should have done, which has not been done, is to seek in this application to replace the respondents with the successors in title to the suit land.
13. The court cannot issue orders on an application which is res judicata and for prayers to supply a death certificate which are irrelevant and unnecessary to the cause of justice before it.
14. In the circumstances I find the application incompetent, an abuse of the court process and lacking merits. The same is hereby struck out with costs to the respondents.
15. A notice shall issue to the appellant to show cause why the appeal should not be dismissed for non-compliance with earlier court orders.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 5TH DAY OF OCTOBER, 2022

In presence of:

C/A: Kananu

Kaunyangi for respondent

Miss Mukamburu for appellant

HON. C.K. NZILI

ELC JUDGE

