



In re Estate of the Late Julia Waithira Karatu (Deceased) (Succession Cause 3098 of 2007 & 1372 of 2013 (Consolidated)) [2025] KEHC 3328 (KLR) (Family) (20 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3328 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 3098 OF 2007 & 1372 OF 2013 (CONSOLIDATED)
HK CHEMITEI, J
MARCH 20, 2025
IN THE MATTER OF THE ESTATE OF THE
LATE JULIA WAITHIRA KARATU (DECEASED)

BETWEEN

MARGARET NJERI KAMAU 1ST APPLICANT

MARY WANGARI KIMEMIA 2ND APPLICANT

AND

PETER KAMAU MURURI RESPONDENT

RULING

1. By their Notice of Motion dated 3rd October 2023 the Applicants seek the following orders:-
 - (a) That this court be pleased to stay all the proceedings in Succession Cause No 3098 of 2007 and 1372 of 2013 pending the hearing and determination of ELC(OA)/E007/2022 Margaret Njeri Kamau & Mary Wangari Kimemia v. Joseph Nganga Muiruri (sued as the legal representative of the estate of the late Julia Waithira Karatu - deceased) in Muranga ELC.
 - (b) That the status quo pertaining to LOC 2/Kangari/2886 be maintained pending hearing and determination of ELC (OS)/007/2022 in Muranga ELC.
 - (c) Costs be provided for.
2. The application is based on the grounds thereof and the sworn affidavit of Mary Wangari Kimemia dated the same date.



3. The gist of the application as contained in the affidavit is that they purchased the suit property from the deceased for a sum of Kshs 300,000 sometimes in 1999 and that they have been in constant use and occupation of the same.
4. That the matter is active in Muranga ELC and being creditors in the estate they feel that if the grant is confirmed they stand to suffer loss and the suit at ELC shall be rendered otiose. That they have been in occupation of the suit land having developed and planted tea bushes a fact within the Respondent's knowledge.
5. On 26th January 2024 the Respondent filed his replying affidavit opposing the application on the grounds among others that the court is funtus officio having determined this matter before. He cited the rulings by Abida Aroni (J) as she was and Odero J whose rulings according to her found that the Applicants were intermeddlers in the estate.
6. The parties were directed to file their written submissions which I have perused and dated 12th March 2024 and 18th February 2025 respectively together with the cited authorities. They both mirror the contents of the respective affidavits.
7. I have also perused the ruling by Odero J dated 27th January 2023 in which she found that the court was not funtus officio as far as the issue of ownership of the suit property was concerned.
8. In her further affidavit the Applicant averred that they have since withdrew the application dated 8th August 2023. There is a notice dated 28th September 2023 to that effect.
9. I think to be fair to all the parties herein there is no evidence that the question of whether or not the Applicants have a claim in the estate has been put to strict proof. The decision of Abida J (as she was) was to set aside a grant which had been fraudulently obtained and have the title revert to the estate of the deceased. In essence all the parties, namely the Applicants and Respondents and any beneficiary had to begin on clean slate.
10. This is buttressed by the Respondent's pending application dated 16th November 2023 seeking to have the grant confirmed. Ordinarily the Applicants ought to response to the same by filing any objection if they deem necessary.
11. There is now the matter (Originating Summons number 007 of 2022) pending before the Environment and Land Court (ELC) at Muranga. In the said suit the Applicants are claiming to be purchasers of the suit property from the deceased. This court does not have jurisdiction to determine the said question. Its jurisdiction falls under the question of the rightful beneficiaries to the estate and its subsequent distribution.
12. It is however noted that under Cap 160 and other related portions creditors are considered beneficiaries if they are able to establish. The better place to raise the same is at the ELC level. How they entered into the agreements with the deceased and many other issues are best litigated therein.
13. In essence and unless otherwise disputed, once they are found to be beneficiaries of the estate by virtue of being creditors then it shall fall now on this court to establish their entitlement in light of the other beneficiaries in the estate.
14. I find that it will be remiss for this court to comment further on the Applicants' rights in this estate. Let the ELC determine the issue before it first. Thereafter the ball can be thrown to this court.
15. Are the Respondent's likely to suffer any prejudice? I do not think so. It appears to me that there is no doubt that the status quo on the ground favors the Applicants. They have planted tea bushes and they



are in constant and continues use of the land. The only prejudice they stand is time which obviously affect all the parties.

16. In the premises I find merit in the application as buttressed by Rules 41(3) and 73 of the Act which mandates this court to make appropriate orders in the interest of justice like the case at hand.

17. Rule 41(3) states as follows;

“Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceedings under Order XXXVI, rule 1 of the Civil Procedure Rules and may thereupon, subject to the proviso to section 71(2) of the Act, proceed to confirm the grant.” (Underlining mine)

18. On the other hand, the overriding rule 73 provides that;

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

19. The application is allowed as follows;

- (a) Let there be stay of proceedings herein pending the hearing and determination of ELC (OS)/007/2022 in Muranga, between Margaret Kamau & Mary Kimemia. Verses. Joseph Nganga Muiruri.
- (b) Let the status quo pertaining to LOC 2/Kangari/2886 be maintained pending the hearing and determination of Muranga ELC(OS)/007/2022.
- (c) The application dated 16th November 2023 by the Respondent is hereby held in abeyance pending the hearing and determination of Muranga ELC(OS)/007/2022.
- (d) Costs in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 20TH DAY OF MARCH 2025.

H K CHEMITEI

JUDGE

