



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Oliver Sagimo Wagori (Deceased) (Succession Cause E3149 of 2022) [2025] KEHC 4152 (KLR) (Family) (3 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4152 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE E3149 OF 2022

HK CHEMITEI, J

APRIL 3, 2025

BETWEEN

PURITY JUDITH RACHAEL OPIYO SAGIMO 1ST APPLICANT

IRENE ACHIENG' SAGIMO 2ND APPLICANT

JACQUELINE CECELLY ADHOCH SAGIMO 3RD APPLICANT

SAGIMO JOSIAH CHRISTOPHER OUGO 4TH APPLICANT

AND

LEE OWEN MADARA RESPONDENT

RULING

1. This ruling relates to the application dated 7th February, 2024 filed by Purity Judith Rachael Opiyo Sagimo, Irene Achieng Sagimo, Jacqueline Cecelly Adhoch Sagimo and Sagimo Josiah Christopher Ougo and seeking for Orders That:-
 - a. This honourable court be pleased to commit the Respondent to prison for a period not exceeding one year or pay a fine not exceeding Kshs. 10,000/= (Kenya Shillings Ten Thousand Only) or both such fine and imprisonment for intermeddling with Plot No.33, Rabai Road, Buruburu Estate the property of a deceased person namely Oliver Sagimo Wagori (deceased).
 - b. This honourable court be pleased to restrain the Respondents from further interfering with Plot No. 33, Rabai Road, Buruburu Estate and allow the administration of the estate to proceed to finality.



- c. This honourable court be pleased to order the Respondent to deposit in court the Kshs. 600,000/= he owes the estate of the deceased in rent arrears on account of his rent-free occupation of Plot No. 33, Rabai Road, Buruburu Estate.
 - d. Costs of this application be borne by the Respondent.
2. The application is based on the grounds thereof and supported by affidavit and supplementary affidavit sworn by Purity Judith Rachael Opiyo Sagimo, Irene Achieng Sagimo, Jacqueline Cecelly Adhoch Sagimo and Sagimo Josiah Christopher Ougo on 7th February, 2024 and 12th July, 2024 respectively.
 3. They aver inter alia that they are the appointed joint administrators of the deceased's estate, granted authority by this court through letters of administration dated 3rd January, 2024. Following the deceased's passing on 25th July, 2024, she left behind Plot No. 33, Rabai Road, Buruburu Estate. After his death, the Respondent, who had been a tenant of the deceased, initiated two legal cases against the estate's beneficiaries. He sought permanent injunctions to prevent them from accessing the property. In one of the applications, the Respondent claimed to have made significant developments on the land without any contribution from the deceased or her beneficiaries, implying that he should have exclusive possession of the property. The cases were filed before the Business Premises Rent Tribunal and the Chief Magistrate's Court.
 4. While the Chief Magistrate's Court and the subsequent appeal were dismissed, the Tribunal initially granted the Respondent an injunction, which he used to stop paying rent while remaining in sole possession of the property for over a year and a half. The injunction barred his eviction and prevented any distress for rent.
 5. On 30th August, 2023, the Tribunal revoked its earlier injunction, originally granted on 29th March, 2022, due to the Respondent's failure to pay rent. He was ordered to pay Kshs.420,000/= in arrears as of May, 2023. However, despite demands for payment, the Respondent neither settled the arrears nor vacated the property. Instead, he continued to occupy it rent-free, excluding the rightful beneficiaries. By the time of filing this application, the Respondent owed Kshs.600,000/= in rent arrears.
 6. The Respondent's current occupation of the property is unauthorized under the *Law of Succession Act* or any other written law. He is fully aware that the property is part of the deceased's estate and under administration. His continued occupation, despite the rescinding of his injunction and his refusal to pay rent as directed by the Tribunal, constitutes contempt of court.
 7. To uphold justice and maintain the integrity of judicial decisions, punitive measures against the Respondent are necessary. The claim that the deceased's property is subject to a controlled tenancy lacks merit. Given the Respondent's refusal to pay rent, a landlord-tenant relationship cannot be established. Furthermore, no documentary evidence has been presented to prove that any legal encumbrance exists on the property.
 8. According to Section 66 of the *Land Act*, a tenant is defined by the payment of rent, which the Respondent has not done since 2021. As such, he cannot be classified as a tenant but rather as an illegal occupant and intermeddler, regardless of any developments he may have made on the property.
 9. This application is crucial to ensuring the estate's administration proceeds without further hindrance. The Respondent's previous allegations - including claims that the administrators unlawfully attempted to evict him, sabotaged his property and disputed the rent amount - have already been adjudicated in Case No. E1151 of 2021 before the Chief Magistrate's Court and Appeal No. E005 of 2023 before the High Court. Both cases were filed by the Respondent and were dismissed. Raising these issues again amounts to forum shopping and is barred by the doctrine of res judicata.



10. Additionally, the Respondent's application dated 8th February, 2024, before the Business Premises Rent Tribunal was an attempt to preempt this application, which had been filed a day earlier on 7th February, 2024. He likely hoped that his pending application would frustrate the administrators' efforts. However, the Tribunal has since dismissed his application.
11. It is contradictory for the Respondent to dispute his rent arrears when he failed to oppose or contest the Tribunal's decision to revoke his injunction due to non-payment. The claim that this application is sub judice is also false. It was filed on 4th February, 2024, and only after seeing it on the e-filing portal did the Respondent rush to file his application before the Tribunal on 8th February, 2024, seeking a stay of execution.
12. Since this application seeks to address intermeddling - effectively an execution application - it is improper for the Respondent to attempt to stay these proceedings before a lower Tribunal. The Tribunal has already dismissed his application.
13. The Respondent has previously been found guilty of forum shopping in Case No. E151 of 2021 for filing identical matters in different courts. His latest attempt to relitigate the rent arrears issue before the Tribunal, after admitting to them in this court, is another instance of forum shopping and is barred by res judicata. As estate administrators, their duty is to recover the deceased's property, collect debts and conclude the estate's administration. The Respondent is neither a beneficiary nor a creditor of the estate and cannot assert rights against the administrators while unlawfully occupying the property. Furthermore, his current lawyer admitted in court on 9th April, 2024, that the Respondent is indeed in rent arrears.
14. The application is opposed vide replying affidavit sworn by Lee Owen Madara on 8th April, 2024. He avers inter alia that around the year 2010, through an oral agreement, he rented part of Plot No. 33, Rabai Road, Buruburu Estate, from the deceased. Since there was no written contract, the tenancy qualifies as a controlled tenancy under the *Landlord and Tenant (Shops, Hotels, and Establishments) Act* (Cap 301) of the Laws of Kenya. He has occupied the premises continuously for over a decade, investing millions in improvements and establishing substantial goodwill.
15. Following the landlord's passing, the Applicants began harassing, intimidating and humiliating him with the apparent intention of unlawfully evicting him, despite the tenancy being legally protected. In their efforts, they have also damaged his property and sabotaged his investments, worth millions, without any legal justification and with complete disregard for his rights.
16. That the Applicants have approached the court in bad faith, having violated the implied terms of the tenancy by destroying his property, making them undeserving of the reliefs sought. Due to these persistent unlawful actions, he sought protection from the Business Premises Rent Tribunal in Case No. E399 of 2021: *Lee Owen Madara t/a First Sunshine Limited v. Purity Judith Rachael Opiyo Sagimo, Irene Achieng Sagimo, Jacqueline Cecelly Adboch Sagimo, and Sagimo Josiah Christopher Ougo*, where the disputed rent amounts are under consideration.
17. Given this, he urges the court to reject the request to deposit the rent arrears in court. The Applicants have failed to disclose material facts, as this matter remains actively before the Business Premises Tribunal, making it sub judice.
18. To prevent conflicting decisions, this court should suspend the current proceedings until the Tribunal resolves the dispute. The Applicants are engaging in forum shopping. Furthermore, their application misinterprets Section 45 of the *Law of Succession Act*, which prohibits interference with the free property of a deceased person. In this case, the deceased's property was subject to a controlled tenancy,



which is already under dispute before the Tribunal. He has not unlawfully interfered with the estate but has instead lawfully asserted his tenancy rights against the estate's administrators.

19. He, therefore, urges the court to stay these proceedings until the Tribunal's decision is finalized. If the court decides not to do so, he asks it to rule that he has not unlawfully intermeddled in the deceased's estate, as the property was not freely available at the time of the landlord's passing but was encumbered by a legally recognized tenancy.
20. The Applicants have filed written submissions dated 29th July, 2024 placing reliance in the following:-
 - a. Mwangi Njangu Meshack Mbogo Wambugu and Esther Mumbi, Civil Case No. 2340 of 21991 (Unreported) as quoted in the High court in *Peter Mbogo Njogu v Joyce Wambui Njogu & another* [2005] eKLR where the court stated as follows: "Resjudicata applies where there is an existing final judgment rendered upon the merits, without fraud or collusion by a court, Tribunal or other judicial body, of competent jurisdiction, is conclusive of causes of action and of facts or issues thereby litigated, as regards the parties and their privies, in all other actions, proceedings or applications in the same of any other court or judicial Tribunal or body of concurrent or exclusive jurisdiction. Once a decision has been given by a court of competent jurisdiction between two persons or their privies over the same subject – matter, neither of the parties would be allowed to litigate the issue again or to deny that the decision had in fact been given, subject of course to certain conditions."
 - b. *In the Matter of the Estate of Veronica Njoki Wakagoto* (Deceased) [2013] eKLR where the court stated as follows: "The effect of this is that the property of a dead person cannot be lawfully dealt with by anybody unless such person is authorized to do so by the law. Such authority emanates from a grant of representation, and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence."
21. The Respondent has filed written submissions dated 2nd July, 2024 placing reliance on the following:-
 - a. *Kenya Bankers Association v Kenya Revenue Authority*, 2019 eKLR where the court stated as follows: "...in addition, it is clear that the matters in issue in the suits or proceedings are directly and substantially the same. The parties in the suits or proceedings are the same. The ex parte applicant herein, is litigating on behalf of 47 members, some of whom are parties in the existing suits. The suits are pending in the High Court which has jurisdiction to grant the relief claimed. A cursory look at the prayers sought in this case show that they relate to the same subject matter. However, the principles of sub judice does not talk about the "prayers sought" but rather "the matter in issue" I find that the matters in issue in the suits are substantially the same. In Re the matter of the Interim Independent Electoral Commission, the Supreme Court cited with approval the Australian decision where it was held: - "... we do not think that the word "matter"... means a legal proceeding, but rather the subject matter for determination in a legal proceedings. In our opinion there can be no matter...unless there is some right, duty or liability to be established by the determination of the court..."
 - b. *David Ndiu & Others v Attorney General & Others* 2021 eKLR where it was stated as follows: "The rationale behind this provision (Section 6 of the Civil Procedure Act) is that it is vexatious and oppressive for a claimant to sue concurrently in two courts. Where there are two courts faced with substantially the same question or issue, that question or issue should be determined in only one of those courts, and the court will..."



Analysis and Determination

22. I have gone through the application, responses thereto and the rival submissions filed by the parties, and it is apparent that the Respondent has been in continued stay of the premises even after the deceased has passed on.
23. There is however evidence that the Respondent has not paid any rent and indeed he is in rent arrears. His simple reasoning is that he has spent millions of shillings in the said house. There is however no evidence presented before this court. His efforts at the Tribunal and the magistrates court are attempts to continue staying in the premises.
24. To be fair, the Applicants are simply administering the deceased estate. If at all he is a creditor to the estate as he suggests then he must place himself within the purview of Cap 160 and stake his claim herein. He cannot use every tactic in the book to remain in the deceased premises without any lawful agreement.
25. In the premises I do find the application herein meritorious and direct as hereunder:-
 - a. The Respondent so as to purge the contempt should within (Fourteen) 14 days from the date herein pay to the Applicants the entire sum of Kshs.600,000 and in default the Applicants be at liberty to execute without further reference.
 - b. The Respondent should settle all the rent arrears if any within (Thirty) 30 days from the date herein and in default the Applicants be at liberty to execute without any further reference.
 - c. The Respondent should enter, if he is still interested in staying in the premises, a valid lease agreement and must ensure that he pays all the rent arrears before then.
 - d. The Applicants shall have the costs of this application.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 3RD DAY OF APRIL, 2025.

H K CHEMITEI

JUDGE

