



REPUBLIC OF KENYA



KENYA LAW
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**Muraya v Mworira (Family Appeal E001 of 2022)
[2025] KEHC 4962 (KLR) (7 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4962 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
FAMILY APPEAL E001 OF 2022
GL NZIOKA, J
APRIL 7, 2025**

BETWEEN

CAROLINE WANJIRU MURAYA APPELLANT

AND

HANNAH NJERI MWORIA RESPONDENT

RULING

1. On 3rd August 2022, the appellant filed a memorandum of appeal appealing against the decision in the Chief Magistrate Succession Cause N0. 90 of 2020, based on the following grounds verbatim reproduced: -
 - a. The learned trial magistrate decision is contradictory misconceived and contrary to the rules of the law and should be set aside.
 - b. The learned trial Magistrate erred in law and in facts by dismiss the appellant’s application for review.
 - c. The learned trial Magistrate’s entire ruling lacks clarity and merit.
 - d. The learned trial Magistrate decision is against the weight of evidence adduced.
2. The appellant thus seeking for the following orders that: -
 - a. The ruling made in Naivasha CM Succession Cause N0. 90 of 2020 be set aside.
 - b. The appellant’s application dated 11th April 2022 in Naivasha CM Succession Cause No. 90 of 2020 be allowed.
 - c. The appellant be awarded the costs of this appeal and the trial court.



3. Subsequently, the appellant filed a notice of motion application dated 13th March 2023, seeking for the following orders: -
 - a. Spent
 - b. Spent.
 - c. That pending the hearing and determination this appeal, there be a stay of proceedings in Succession Cause No. 90 of 2022.
4. The application is brought under the provisions of; Order 42 rule 6 and Order 22 rule 22 of the Civil Procedure Rules 2010, section 63E of the Civil Procedure Act (Cap 21) Laws of Kenya and all enabling provisions of the law.
5. The application is further supported by the grounds thereto and the affidavit of the even date sworn by the applicant. She avers that the trial court delivered a ruling vide Naivasha Chief Magistrates Succession. No. 90 of 2020 and dismissed her application for review.
6. Further, her appeal is against the entire judgment and the respondent has transferred the subject land into her name and is in the process of evicting her from therefrom, yet she has constructed the house thereon and resides there.
7. That, her appeal has a high chance of success, and if the application is not allowed, she stands to suffer irreparable loss and damages and the appeal rendered nugatory. But, the respondent will not be prejudiced if the orders sought are granted, and it is fair and just that the execution of the decision in Chief Magistrate's Succession Cause. No. 90 of 2022 be stayed pending the hearing of the appeal.
8. The applicant, albeit without leave of court filed a further affidavit sworn on 5th October 2023, where she avers that, she has been in possession of the parcel of land known as; Bahati/Kabatini Block 1/11284 & 11285 for more than twelve (12) years, paid for the installation of electricity thereon and has been paying the land rates.
9. However, the application was opposed by the respondent who swore an affidavit dated 29th January 2024 deposing that she is the Administrator of the estate of the Late Isaac Mworira Wainaina. That she was married to the deceased through a customary marriage that was subsequently solemnized as a Christian marriage. That the deceased never had another wife in his lifetime.
10. Further, together with the deceased, they acquired a plot from Nakuru Teachers Sacco which the deceased later sold and acquired two plots in Nakuru Engashura, being Bahati/Kabatini Block 1/11284 & 11285. That, the estate of the deceased has since been distinguished through execution of the grant and therefore there is no properties remaining for administration.
11. She argued that, the application is misplaced as there are no pending proceedings capable of being stayed in Chief Magistrate Succession Cause No. 90 of 2022. Further, the applicant was yet to serve her with the memorandum of appeal and record of appeal; thus there is no competent appeal before the court.
12. That additionally, the applicant has not attached any evidence to show her entitlement to any of the properties considering the receipts for payment of land rates were made by the deceased.
13. That, the applicant is not interested in the appeal and the same should be dismissed to allow her to proceed with the suit for eviction filed in Nakuru Environment and Land Court Case No. 105 of 2022.



14. The matter proceeded by way of oral hearing where the applicant stated that she had lived with the deceased as her husband for nineteen (19) years and were residing in the subject house for fifteen (15) years. That she constructed on the said property and pays for the utilities, including water and electricity and has kept receipts of the same.
15. She stated that her husband died and gave her the property, but the other family of the deceased filed a suit against her in Nakuru which is still pending and prays the court to assist her.
16. However, Mr. Gakinya learned counsel for the respondent stated that, the applicant did not prove in the trial court that she was a wife to the deceased or that they had any children together. That, the respondent was married to the deceased through a Christian marriage that does not recognize any other marriages.
17. Further, the applicant has not brought any new material before the court. In any case, the applicant's claim can be canvassed through a civil claim for compensation.
18. I have considered the pleadings filed by the parties and notably, the appellant has not filed a record of appeal therefore no substantive orders can be made on the appeal.
19. Order 42 rule 13(4) of the Civil Procedure Rules provides that: -
 - (4) Before allowing the appeal to go for hearing the judge shall be satisfied that the following documents are on the court record, and that such of them as are not in the possession of either party have been served on that party, that is to say—
 - (a) the memorandum of appeal;
 - (b) the pleadings;
 - (c) the notes of the trial magistrate made at the hearing;
 - (d) the transcript of any official shorthand, typist notes electronic recording or palantypist notes made at the hearing;
 - (e) all affidavits, maps and other documents whatsoever put in evidence before the magistrate;
 - (f) the judgment, order or decree appealed from, and, where appropriate, the order (if any) giving leave to appeal:
Provided that—
 - (i) a translation into English shall be provided of any document not in that language;
 - (ii) the judge may dispense with the production of any document or part of a document which is not relevant, other than those specified in paragraphs (a), (b) and (f).
20. In the absence of a complete record of appeal the application herein has no foundation, consequently the application cannot be heard and the appeal is dismissed for want of prosecution.

DATED, DELIVERED AND SIGNED THIS 7TH DAY OF APRIL 2025.

GRACE L. NZIOKA

JUDGE



In the presence of:

The applicant in court

N/A for the respondent

Ms. Hannah: court assistant

