



**In re Estate of Arim s/o Karuguma alias M'Arimba Karuguma - Deceased  
(Succession Cause 435 of 2013) [2025] KEHC 10398 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10398 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 435 OF 2013  
HM NYAGA, J  
JULY 10, 2025**

**BETWEEN**

**MBOGO M'ARIMBA ..... PETITIONER**

**AND**

**M'ARIMI M'ARIMBA ..... RESPONDENT**

**RULING**

1. Coming for determination is the application dated 7<sup>th</sup> June, 2024 and it seeks the following prayers:
  - a. Spent.
  - b. That this Honourable court be pleased to issue orders stopping the implementation of the illegal orders obtained by the Petitioner illegally and on concealment of the material facts granted on 14<sup>th</sup> December, 2021 and issued on 20<sup>th</sup> January, 2022 pending the hearing and determination of this application inter-parties.
  - c. That this Honourable court be pleased to discharge and set aside the ex-parte orders granted on 14<sup>th</sup> December, 2021 and issued on 20<sup>th</sup> January, 2022 and any other subsequent orders therefrom.
  - d. That this Honourable court be pleased to issue orders to summon private Surveyor by the name Geodigital Survey Limited and the Court Process server by the name Joseph Kithini M'Kiambati for cross-examination over the report dated 20<sup>th</sup> August, 2019 and affidavit of service dated 1<sup>st</sup> November, 2021 and filed on the same day.
  - e. That this order be served upon the District Surveyor Meru Central and OCS Nkubu Police Station for compliance.
  - f. That this Honourable court be pleased to issue any further orders as it deem just.



2. The application is premised upon the grounds set out on its face and is supported by the affidavit of the applicant, sworn on even date.
3. In a nutshell, the applicant avers that the respondent filed an application dated 18<sup>th</sup> October, 2021 and fraudulently purported to have served the same upon the applicant and his brother Nkong'e M'Arimba on 28<sup>th</sup> October, 2021, instead of serving it upon his advocates on record, and proceeded to obtain orders ex-parte. That the property that is the subject of the estate has an actual measurement of 3.84HA, on the ground and the same was registered into 3 equal portions of 1.28Ha instead of the registered area of 4.09HA. That despite this, the respondent is adamant that the land be divided as per the measurement in the title document and has refused to heed the advice of the District Surveyor and brought his own Private Surveyor who is unqualified and who indeed misadvised the respondent that the land ought to be sub-divided as per the title and not the ground measurements.
4. The applicant thus seeks that the said private surveyor be summoned to court over his report. The applicant also seeks that the process server be summoned for cross-examination over his alleged service.
5. The respondent filed a replying affidavit on 6<sup>th</sup> December, 2024.
6. In a nutshell, the respondent deponed that the orders issued on 4<sup>th</sup> December, 2021 were in respect to the application dated 18<sup>th</sup> October, 2021. That the said application was duly served on the respondents by the process server, who duly filed an affidavit of service. That the applicant did not file any response and that the court would not have issued the orders had it not been satisfied on the service of the application. That after the order for re-survey the surveyor wrote to the Officer Commanding Station (OCS) – Nkubu Police Station, the Chief Katheri Location and all the beneficiaries who were affected, notifying them of the intended re-survey. That after the scene visit, the County Surveyor duly notified the court of the scene visit done on 22<sup>nd</sup> August, 2023. That the survey was not conclusively done, due to the absence of some of the beneficiaries.
7. It is further deponed that the applicant was well aware of the orders all along and it is him who is guilty of concealment of material facts.
8. It is further averred that to his knowledge the process server is now deceased.
9. The respondent further avers that the applicant ought to be honest and tell the court why the re-survey should not be done and if there is any prejudice occasioned to them.
10. Parties filed submissions which I will not rehash. It suffices to state that I will refer to them where necessary.
11. A perusal of the court record reveals, that the matter has had a long and chequered history, revolving around the issue at hand.
12. The deceased died intestate and left three sons surviving him. His only property was land Parcel Number Nkuene/Kathera/534. According to the certificate of official search filed herein the said property measured approximately 4.09 Hectares.
13. By a certificate of confirmation of grant issued on 27<sup>th</sup> February, 2018, the parcel of land was to be shared by the 3 beneficiaries equally. The court, on various occasions issued orders that the said property be subdivided into three (3) equal portions.
14. What seemed to be a straight forward issue has turned out to be a heavily contested one. When the District Surveyor, one J.K Munyua, tendered his report dated 2<sup>nd</sup> February, 2021 he indicated that the upon visiting the ground, he found that the actual measurements of the property were 3.84 Hectares



- and not 4.09 Hectares as set out in the title document. This then prompted the court to the effect that the grant be executed in terms of the said report where each beneficiary was to get 1.28 Hectares or 3.16 acres.
15. Subsequently, the Petitioner/Respondent filed an application dated 18<sup>th</sup> October, 2021. The same sought the following orders:-
    - a. Spent
    - b. That the Honourable court be pleased to grant an order for re-surveyor that the Meru District Surveyor do visit the Parcel Nkuene/kathera/534 and re-surveyor.
    - c. That the OCS Nkubu Police Station to provide security during the implementation.
    - d. That the parties herein be at liberty to be occupied by their respective private surveyors during the implementation of the order.
    - e. That the Honourable court do grant any other order it deems for justice to be met.
  16. On 14<sup>th</sup> December, 2021 the Petitioner appeared in court and informed it that the said application had been served. The court allowed the application in terms of prayers 2, 3 and 4 thereof.
  17. Nothing happened on record until 20<sup>th</sup> May, 2024, when the parties appeared before Hon. Justice T. Cherere and the applicant's advocate informed the court that the court that the application dated 18<sup>th</sup> October, 2021, was never served on them. The court gave the applicant time to file an application for the review of the orders issued on 14<sup>th</sup> December, 2021. It is this application that is the subject of this ruling.
  18. There is no dispute that the parties were represented by their respective advocates throughout. Once a party has appointed an advocate, the regular procedure is that any pleadings ought to be served on that advocate, unless the court orders otherwise. That being the position, it is then baffling that the Petitioner/respondent chose to serve the application dated 18<sup>th</sup> October, 2021 on the parties directly. This was the cause of the problems that followed. Although the process server claims to have served the parties, that service is denied.
  19. In my view, that omission to serve the advocate on record for the applicant is sufficient cause to set aside the order issued in their absence. Even though the subsequent order was duly served on the applicants, they had a right to respond to the application.
  20. Given the circumstances, I allow the application and set aside the orders issued on 14<sup>th</sup> December, 2021.
  21. So what other orders should issue?
  22. As I stated earlier, the matter ought to be quite straightforward, but the parties appear to be keen to complicate issues. The grant ought to be executed as ordered.
  23. To put the matter to rest I make the following orders:-
    - a. The County Surveyor to visit the parcel of land and :-
      - i. Take the exact ground measurements of the lad previously known as Nkuene/ Kathera/534.
      - ii. Take the exact ground measurements of the proposed subdivision Nos. 2768, 2769 and 2770 and ensure that they are equal in size (approximately).
    - b. Upon such measurements the surveyor is to file his report in court.



- c. Each party will bear the survey costs equally.
- d. If any party desires to have an individual surveyor, they shall procure the same, and cater for the same in addition to the costs under (c ) above.
- e. The parties not to undertake any changes on the ground until they are directed so by this Court.
- f. There shall be no orders as to costs of the application.

**DATED, DELIVERED AND SIGNED AT MERU THIS 10<sup>TH</sup> DAY OF JULY, 2025.**

**HON. H. M NYAGA**

**JUDGE**

