



**Muturi v Gikombi & 3 others; Jacob (Administrator) (Succession Cause 465 of 2011) [2025] KEHC 13139 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13139 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
SUCCESSION CAUSE 465 OF 2011  
RM MWONGO, J  
SEPTEMBER 24, 2025  
IN THE MATTER OF THE ESTATE OF JACOB GIKOMBI NJOCHOMBA (DCD)**

**BETWEEN**

**CHRISTINE MURUGI MUTURI ..... APPLICANT**

**AND**

**JACKSON NJIRU JACOB GIKOMBI ..... 1<sup>ST</sup> RESPONDENT**

**FRANCIS MUGO MUNYI ..... 2<sup>ND</sup> RESPONDENT**

**CATHERINE KANYIVA GIKOMBI ..... 3<sup>RD</sup> RESPONDENT**

**MARTIN NJERU NJOCHOMBA ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**CACILIA WEVETI JACOB ..... ADMINISTRATOR**

**RULING**

**The Application**

1. The applicant filed a summons dated 06<sup>th</sup> May 2024, in which she seeks the following orders:
  - a. That the Honourable court be pleased to order the 1<sup>st</sup> – 4<sup>th</sup> respondents, their agents, servants, children, relatives or anyone claiming through them be removed and evicted from L.R. Gaturi/Nembure/5992 forthwith;
  - b. That M/S Quickline Auctioneers (court bailiff) to carry out the said eviction;
  - c. That the OCS Runyenjes Police Station provide security during the eviction; and
  - d. That costs of this application be paid by the respondents.



2. It is the applicant's case that she rightfully bought the property from the Administrator of the estate at a time when the land was vacant and unoccupied. While the summons for revocation was pending determination, the 1<sup>st</sup> respondent move into and occupied the named piece of land and has since refused to vacate it. She seeks an order of eviction because she has been denied access to the land since 2021, yet she claims she is a bona fide purchaser, now suffering economic hardship.

### **Replying Affidavit**

3. The respondents filed a joint replying affidavit stating that they have since appealed to the Court of Appeal against the decision of this court's ruling delivered on 15<sup>th</sup> February 2023, and the matter is still pending determination. That the applicant is aware of this appeal but is still willing to break the rules of procedure by seeking these orders. They deposed that the applicant already filed a similar application before the ELC but it was dismissed for failing to comply with the laid down procedure of moving that court through a plaint. They stated that the applicant is forum shopping and that she cannot allege to have purchased the said land which she never occupied.

### **Parties' Submissions**

4. The applicant submitted that she has full rights over the said land under section 24(a) of the [Land Registration Act](#) because she legitimately bought it. She relied on the case of *Municipal Council of Eldoret v Titus Gatitu Njau (2020) eKLR*. She argued that she was never served with the alleged appeal that has been lodged at the Court of Appeal. She also stated that the ELC did not give any orders for this application to be regarded as res judicata.
5. The respondents argued that the orders sought should be brought through a substantive suit and not through the summons herein and they referred to Order 3 Rules 1 and 2 of the Civil Procedure Rules. They urged the court not to allow the application which is based on the wrong provisions of law being Rule 73 of the Probate & Administration Rules.

### **Issue for determination**

6. From the foregoing, the issue for determination is whether the application has merit.

### **Analysis and Determination**

7. Through its ruling delivered on 15<sup>th</sup> February 2023, this court (Njuguna J) dismissed summons for revocation of grant dated 26<sup>th</sup> September 2020. The grant was issued to the administrator on 20<sup>th</sup> January 2012 and she filed summons for its confirmation dated 10<sup>th</sup> May 2012. Through an order of the court issued on 21<sup>st</sup> February 2013, the grant was confirmed, the court noting that all the beneficiaries were present in court.
8. When the summons for revocation of the grant was filed, the suit land had already been disposed to the applicant herein by way of sale sometime in 2020. She gave the circumstances surrounding her acquisition of the property from the estate through her replying affidavit to the summons for revocation. Therein, she deposed that she bought the land 8 years after the grant was issued and that a title deed had already been issued. The summons for revocation of grant was dismissed but the applicant stated in her application that the 1<sup>st</sup> respondent has moved into the land and refused to leave, thus necessitating the eviction orders.
9. In response to this application, the respondents simply stated that the applicant has flaunted rules of procedure as she seeks the orders herein. That the same orders were sought before the ELC but



were dismissed. That the respondents have appealed against the ruling of this court at the Court of Appeal and they produced copies of the notice and memorandum of appeal as evidence. The applicant submitted that she was not served with the appeal and the respondents did not prove that they served the documents upon the applicant.

10. Upon perusal of Embu ELCLC Misc. Application E003 of 2024, it is evident that the matter is still ongoing. The applicant had filed that application seeking similar orders as the ones sought herein. The ELC Judge, Bor, J., on 19<sup>th</sup> March 2025 noted that none of the parties were in court and she directed that ‘applicant to pursue her claim in the succession cause.’ The Honourable Judge gave a further mention date and the matter was later referred for mediation. It is currently pending mention before the Mediation Deputy Registrar. No final orders were given by the ELC in that case hence the issue of res judicata does not arise.
11. Following the impugned ruling, the respondents did not seek a stay or status quo order even though they appealed. The applicant asserts that she is the registered owner of the land and the impugned ruling did not affect this ownership. The respondents urged this court to dismiss the application for abusing rules of procedure since the orders should be sought through a substantive suit. This argument is not properly grounded because the orders have been sought through Rule 73 of the Probate and Administration Rules which provides:

“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.”
12. It is not necessary for the applicant to file a separate substantive suit yet she can move this court to exercise its inherent powers as provided for in Rule 73 aforesaid. To do so would amount to wasting judicial time and resources. In any event, the orders sought are in reference to a ruling of this court which favours the applicant’s position.

### **Disposition**

13. All said, it is my view that there is no reason why the court cannot or should not grant the orders sought. The applicant is the registered title holder of the said property and no orders of this or any other Court bar her said entitlement.
14. Accordingly, the application is allowed as prayed in terms of prayers (a), (b) and (c) of the summons dated 6<sup>th</sup> May, 2024.
15. No orders as to costs.
16. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 24<sup>TH</sup> SEPTEMBER, 2025.**

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

Mogaka holding brief for M. Njeru for Applicant

Murithi holding brief for A. Maina for 1-3 Respondents

No Representation for Martin Njeru Njochomba (Mother Cecilia Waveti is Present)



Cecilia Waveti - Administrator

Francis Munyao - Court Assistant

