



In re Estate of Sabastian Mbwiri Kieni (Deceased) (Succession Cause 409 of 2007) [2024] KEHC 1462 (KLR) (15 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1462 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 409 OF 2007
TW CHERERE, J
FEBRUARY 15, 2024**

**IN THE MATTER OF THE ESTATE OF SEBASTIAN MBWIRI KIENI DECEASED
AND**

**IN THE MATTER OF AN APPLICATION FOR CANCELLATION OF TITLES
BETWEEN**

BETWEEN

LYDIAH KARIMI APPLICANT

AND

EDWARD MWRIGI MBWIRI 1ST RESPONDENT

JOANINA KAIMURI MBWIRIA 2ND RESPONDENT

JULIA MUGURE MBWIRIA 3RD RESPONDENT

CHRISTINE MUKIRI 4TH RESPONDENT

ROSEMARY MWENDWA MBWIRI 5TH RESPONDENT

PHINEAS GIKUNDA MBWIRIA 6TH RESPONDENT

RULING

1. By ruling dated 27th June, 2009, this court revoked the grant issued on 10th March 2008 and confirmed on 16th September 2009.
2. In the said revoked grant, one of deceased's assets namely LR. Nkuene/L-Mikumbune/689 (suit property), which is the main subject of this ruling had been distributed to Joanina Kaimuri Mbuiria (1st Petitioner/Respondent).



3. Subsequently by a ruling dated 30th September, 2020, the court distributed the suit property Lydia Karimi to hold in equal shares with her children Edwin Mugambi, Mercy Gakii, Rosa Wanja and Moreen Gatwiri and a Certificate of Confirmation of Grant was accordingly issued on 03rd February, 2021.
4. Rectifications to the Certificate of Confirmation of Grant were subsequently made concerning correction of the name of Lydia Karimi and deletion of the name of Edwin Mugambi from among the list of Lydia Karimi's child and a Further Rectified Grant dated 08th February, 2023 was issued distributing the suit property Lydia Karimi to hold in equal shares with her children, Mercy Gakii, Rosa Wanja and Moreen Gatwiri
5. By summons dated 25th October, 2023, it has now been brought to the attention of the court that the suit property is yet to be transmitted to Lydia Karimi and her children Mercy Gakii, Rosa Wanja and Moreen Gatwiri for the reason that even though the court had on 27th June, 2009 revoked the grant issued on 10th March 2008 and confirmed on 16th September 2009 distributing the suit property to 1st Petitioner/Respondent, the suit property had nonetheless be transmitted and title deed issued to her on 27th July, 2010.
6. Arising from the foregoing, Lydia Karimi (Applicant) seeks orders that the title in the suit property be reverted to the name of the Sebastian Mbwri Kiene (Deceased) so that the same can be distributed to her and children Mercy Gakii, Rosa Wanja and Moreen Gatwiri. Applicant additionally seeks that the Land Registrar dispenses with production of the original title LR. Nkuene/L-Mikumbune/689 which the Respondents have declined to release.
7. The summons was opposed by Christine Mukiri, the 3rd Protestor/Respondent by an affidavit sworn on 06th November, 2023 in which she avers that the parties have a pending appeal Nyeri Civil Appeal No. E133 Of 2023 and execution ought to be stayed pending the determination of the appeal.
8. By a supplementary affidavit sworn on 09th November 2023, Applicant in opposing the 3rd Protestor/Respondent contention stated that the Court of Appeal had declined to grant an order of stay of execution as demonstrated by the 3rd Protestor/Respondent annexure No. CM1 (b).
9. I have considered the summons in the light of the affidavits on record, the previous court orders and submission filed on behalf of the Applicant on 09th November, 2023, the Respondents not having failed any.
10. In the case of *MN v TAN & another* (2015) eKLR the court held as follows: -

“A valid court order has to be obeyed or complied with regardless of how aggrieved a party is about it. The order has the force of law. It is not a mere wish or proposition. Disobedience or non-compliance with it attracts severe consequences”.
11. And in the case of *Teachers Service Commission v Kenya National Union of Teachers 2 others* (2013) eKLR, the court held that: -

“A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.”



12. There is no doubt that the orders distributing the suit property Lydia Karimi to hold in equal shares with her children, Mercy Gakii, Rosa Wanja and Moreen Gatwiri remains valid and in the absence an order to stay its execution or set it aside, the Respondents have a legal obligation to obey those orders whether they agree with them or not and no matter how unpalatable the orders may be.
13. A copy of green card the suit property annexed to Applicant's affidavit sworn on 25th October, 2023 demonstrates that inspite of the court order dated 27th June, 2009 revoking the grant issued on 10th March 2008 and confirmed on 16th September 2009 distributing the suit property to 1st Petitioner/ Respondent, the suit property was in utter disobedience of the court order transmitted and title deed issued to 1st Petitioner/Respondent on 27th July, 2010 more than two years after the court revoked the grant.
14. The blatant disregard of court orders demonstrated by the Respondent has not only occasioned the Applicant prejudice but erodes the confidence of the authority and sovereign people of Kenya which is delegated to the Judiciary and it must be resisted for the interest of justice to all parties concerned.
15. From the foregoing analysis, I find that the summons dated 25th October, 2023 has merit and it is allowed in the following terms:
 1. The Land Registrar Meru is hereby directed to cancel entries Nos. 7,8,9 and 10 in the register of LR. Nkuene/L-Mikumbune/689 and revert the title to the name of Sebastian Mbwri Kiene (Deceased)
 2. In transmitting LR. Nkuene/L-Mikumbune/689 to Lydia Karimi to hold in equal shares with her children, Mercy Gakii, Rosa Wanja and Moreen Gatwiri, the Land Registrar Meru is hereby directed to dispense with production of original title for the said LR. Nkuene/L-Mikumbune/689
 3. Joanina Kaimuri Mbuiria (1st Petitioner/Respondent) shall bear the costs of the summons
 4. This matter will be mentioned on 29th April, 2024 to confirm compliance with these orders and transmission

DATED AT MERU THIS 15TH DAY OF FEBRUARY 2024

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Applicant - Mr. Karanja for Mwirigi Kaburu & Co. Advocates

For Respondents - Mr. Gitonga for Frank Gitonga & Associates

