



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of John Ndung'u Muriithi alias John Ngung'u Mureithi alias Ndung'u Muriithi (Deceased) (Succession Cause E018 of 2021) [2024] KEHC 4685 (KLR) (17 April 2024) (Ruling)

Neutral citation: [2024] KEHC 4685 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE E018 OF 2021**

HM NYAGA, J

APRIL 17, 2024

**IN THE MATTER OF THE ESTATE OF JOHN NDUNG'U
MURIITHI ALIAS JOHN NGUNG'U MUREITHI ALIAS
NDUNG'U MURIITHI (DECEASED)**

BETWEEN

**FRANCIS WACHIRA NDUNG'U 1ST ADMINISTRATOR
MARGARET WACHU NDUNG'U 2ND ADMINISTRATOR
LEAH WANJA NDUNG'U 3RD ADMINISTRATOR
LUCY WAMBUI WARUGU 4TH ADMINISTRATOR**

AND

PETER MWANU NDUNG'U BENEFICIARY

RULING

1. What is before me for determination is the Applicants' Summons dated 25th March, 2024. It is brought pursuant to Sections 45 and 47 of the [Law of Succession Act](#), Rule 49 and 73 of the [Probate and Administration Rules](#), 1986.
2. The summons seeks for Orders: -
 - i. Spent
 - ii. That this Honourable Court be pleased to issue an order of eviction of the Respondent from L.R No. Nakuru/Municipality Block3/436, L.R No. Nakuru/Municipality Block3/1127 and L.R No. Nakuru/Municipality Block3/6 forthwith in enforcement of order No. 1(b) of its orders of 31st January, 2024.



- iii. That the O.C.S, Nakuru Central Police Station and his/her designated police officer's do provide security to M/S Nasioki Auctioneers in enforcement of prayer ii. hereinabove.
 - iv. That the Respondent do prepare and place before this Honourable Court a true and accurate statement of account of all the rent collected and/or lodging fees respectively from L.R No. Nakuru/Municipality Block3/436, L.R No. Nakuru/Municipality Block3/1127 and L.R No. Nakuru/Municipality Block3/6 for the period running from 25th November, 2020 to date.
 - v. That costs of this Application be borne by the Respondent.
3. The Application is predicated on grounds on its face and supported by an Affidavit of the Applicants herein sworn on 27th March, 2024.
 4. It is the Applicants' case that they were issued with a Grant of letters of Administration intestate on 16th August, 2021 and the same was confirmed on 14th February, 2023 and a certificate of confirmation of Grant issued to that effect.
 5. That a Rectified Certificate of Confirmation of Grant was issued on 19th June, 2023 and therein, parcels of Land known as L.R No. Nakuru/Municipality Block 3/436 was bequeathed to Patrick Muriithi Ndung'u, L.R No. Nakuru/Municipality Block 3/1127 bequeathed to Pauline Waitiri Ndung'u and L.R No. Nakuru/Municipality Block 3/6 bequeathed to Joseph Ngugi Ndung'u and Gideon Karegwa Ndung'u.
 6. They aver that the respondent has illegally been in possession and or control of the developments on the aforementioned parcels of land long before confirmation of grant of letters of administration and has been without their consent collecting rent and renting out the said premises for his personal and selfish gain contrary to Section 45 of the Law of Succession Act.
 7. They contend that their attempts to obtain vacant possession of the subject premises have been met with hostility by the Respondent and on 24th October, 2023 they served the Respondent with the 30 days' notice to cede possession of the subject premises and or cease any illegal dealings thereon but the same did not elicit any positive response from him. That they made an application dated 29th November, 2023 which was allowed by this Honourable Court on 31st January, 2024.
 8. They aver that despite the court orders the Respondent has failed to vacate and or give vacant possession of the aforesaid parcels of land and that they have a statutory duty to complete administration as well as ensure successful transmission of the deceased's estate to the rightful beneficiaries.
 9. The Respondent, despite being duly served with the Application, chose not to file any response.

Analysis and Determination

10. The sole issue of determination is whether the orders sought are merited.
11. There is no dispute that the aforementioned parcels of land were bequeathed to the aforesaid respective beneficiaries as deposed above vide a Rectified Certificate of Confirmation of Grant issued on 19th June, 2023.
12. The Respondent failed to vacate the said premises despite knowledge of the same thus prompting the Applicants to approach this court vide an application dated 29th November, 2023 seeking inter alia an order for his eviction from the aforementioned parcels of land.
13. On 31st January, 2024, I issued the following orders: -



- a. The Respondent to give vacant possession of the three premises in question to the rightful beneficiaries within the next 30 days (if he is in actual occupation) or hand over the same to the Applicant (if not in actual occupation)
 - b. In default, the Applicant be at liberty to apply for eviction orders by a court bailiff or licenced auctioneers.
 - c. That the O.C.S Nakuru Central Police Station may provide security during the exercise.
14. The Applicants herein on the strength of the above orders have approached this court via the instant application seeking implementation of the same. They have successfully demonstrated that they served the Respondent with the above orders on 22nd February, 2024 through the annexed Affidavit of Service marked as “F.W.N-VII” but the respondent has failed to comply with them.
 15. The court does not issue orders in vain. Court orders must be obeyed by all parties. It is my findings therefore that Order Nos. 2 and 3 of the Application are merited.
 16. The Applicants also contend that the Respondent has been in control of the developments on the parcels of land in issue and has been collecting rent and renting out the said premises for his personal and selfish gain contrary to Section 45 of the *Law of Succession Act*.
 17. Section 45 of the *Law of Succession Act* provides as follows;-
 - “ 45.
 - (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
 - (2) Any person who contravenes the provisions of this section shall -
 - a. be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine imprisonment; and
 - b. be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”
 18. The Respondent is not an Administrator and is intermeddling with the estate of the deceased by collecting rents as stated. He has not complied with Section 45(2) (b) above and I equally find that Order No.3 is merited.
 19. In the upshot, I allow the summons dated 25th March, 2024 as prayed.
 20. The appointed bailiff shall issue the requisite notices and in default of compliance, he shall proceed to carry out the eviction as provided by the law.
 21. The respondent shall bear the costs of the application.
 22. Orders accordingly.



DATED, SIGNED AND DELIVERED AT NAKURU THIS 17TH DAY OF APRIL, 2024.

H. M. NYAGA,

JUDGE.

In the presence of;

Court Assistant Philip

Mrs Mukira for Applicants

No appearance for Respondent

