



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Elijah Mwangi Mbiro (Deceased) (Succession Cause  
38 of 2016) [2024] KEHC 3156 (KLR) (2 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3156 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 38 OF 2016**

**SM MOHOCHI, J**

**APRIL 2, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE ELIJAH MWANGI MBIRO**

**BETWEEN**

**MICHEAL KAMAU MWANGI ..... 1<sup>ST</sup> APPLICANT**

**LOISE WANGARI NJOROGE ..... 2<sup>ND</sup> APPLICANT**

**AND**

**DAVID MUNGAI MWANGI ..... RESPONDENT**

**RULING**

1. Before this Court for determination is the Chamber Summons application dated 8<sup>th</sup> November, 2023 seeking the following;
  - i. That the Honourable Court be pleased to authorize the Deputy Registrar of the High Court of Kenya, Nakuru Law Courts to execute all necessary conveyance instruments on behalf of David Mungai Mwangi to effect the subdivision and transfer of all parcels of land as reflected on the Certificate of Confirmation of Grant dated 7<sup>th</sup> June, 2022 to the Applicant's herein.
  - ii. That the Honourable Court be pleased to order David Mungai Mwangi surrender the Original Title Deeds to the Applicants in respect of the properties of the deceased so as to facilitate compliance for subdivision and transfer of the same within 14 days of service of this Order upon him failure to which the Applicants be at liberty to apply for reissuance of the same
  - iii. That costs of this application be provided for and borne by the Administrators.
2. The Application was premised on the grounds on the face of it and the Supporting Affidavit of Michael Kamau Mwangi and Loise Wangari Njoroge. They deponed that the Respondent has refused to surrender the original title deeds to enable them facilitate transfers of the properties of the deceased to the rightful beneficiaries despite several attempts to compel him to surrender them. They stated that



the delay is inordinate and prejudicial to their interests and the inaction of the Respondent undermines the Court. That the Court should intervene to give effect to the Grant of Probate as there was no reasonable Justification for noncompliance.

3. The Application was unopposed.
4. The Court on 21<sup>st</sup> November, 2023 directed that the Application be canvassed by way of Written Submissions.
5. The Applicants through their submissions filed on 5<sup>th</sup> March, 2024 submitted that the Court ought to authorize the Deputy Registrar to execute all conveyance instruments and relied on the provisions of Section 98 of the Civil Procedure Act as well as the case of Charles Mukoma Kimaru v Jobstone Muchomba Kaguya (2020) eKLR.
6. The Applicants also contended that the matter being at the completion stage the delay is unnecessary and the Court can order surrender of the titles reliance was place in Re Estate of Jonathan Muia Mumo (DCD) (2020) eKLR.

### **Determination**

7. I have considered the Application and the Submissions on record. The Respondent did not file any response despite being served as evidenced by the return of service dated 17<sup>th</sup> November, 2023.
8. The deceased herein died intestate on 9<sup>th</sup> May, 2012. The beneficiaries consented to the distribution of most properties and the distribution of the only contested properties was determined by the judgement of this Court of 26<sup>th</sup> May, 2022. A Certificate of Confirmation of Grant was issued on 7<sup>th</sup> June, 2022. The Applicants allege that the Respondent has frustrated the process by withholding title deeds to the properties of the deceased.
9. This Court while finding that, the disregard of court orders as is manifested by the Administrators would constitute contempt of court to which the administrators could be cited or other penal sanctions imposed on them. It will be in the broader interest of justice to issue reliefs and orders that are intended to settle the estate and resolve wrangles and thus all reliefs sought for in the 1<sup>st</sup> Application were duly considered.
10. Accordingly, the Court allows the Application dated 8<sup>th</sup> November, 2023, on the following terms: -
  - i. That an Order is hereby issued directed at David Mungai Mwangi to surrender to the Applicants the Original Title Deeds in respect of the properties of the deceased so as to facilitate compliance for subdivision and transfer of the same within fourteen (14) days of service of this.
  - ii. That in the event of failure and or refusal to comply with Order (i) above by David Mungai Mwangi, The Registrar of Lands Nakuru County is hereby directed to waive the requirement of the submission of the Original Title Deeds in respect of the properties of the deceased to facilitate subdivision and transmission of the same to respective beneficiaries.
  - iii. The Deputy Registrar of the High Court of Kenya, Nakuru Law Courts, shall execute all necessary transmission instruments on behalf of David Mungai Mwangi to effect the subdivision and transfer of all parcels of land as reflected on the Certificate of Confirmation of Grant dated 7<sup>th</sup> June, 2022 to the Applicant's herein.
  - iv. The Applicants shall within the next ninety (90) days from the date hereof file an affidavit detailing all the distribution undertaken and if the estate is settled then to bring the succession to a close.



v. This being a family matter, parties shall bear their respective costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 2<sup>ND</sup> DAY OF APRIL 2024.**

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**MOHOCHI S.M.**

**JUDGE**

