



**Estate of Samuel Mbugua Kimani (DCD) (Through Paul Kimani Mbugua and Mary Wariara Mbugua Being Personal Representatives) v Indosuez & another (Miscellaneous Application E062 of 2023) [2024] KEHC 5596 (KLR) (22 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5596 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
MISCELLANEOUS APPLICATION E062 OF 2023  
LM NJUGUNA, J  
MAY 22, 2024**

**BETWEEN**

**THE ESTATE OF SAMUEL MBUGUA KIMANI (DCD) (THROUGH PAUL KIMANI MBUGUA AND MARY WARIARA MBUGUA BEING PERSONAL REPRESENTATIVES) ..... APPLICANT**

**AND**

**CREDIT AGRICOLE INDOSUEZ ..... 1<sup>ST</sup> RESPONDENT  
BANK OF AFRICA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant has filed a notice of motion dated 03<sup>rd</sup> November 2023, being supported by grounds on its face and in the supporting affidavit thereof, seeking the following orders:
  1. Spent;
  2. That this court be pleased to order the immediate and unconditional discharge of the charge in respect of title number Ngandori/Kirigi/2716 registered in favour of 1<sup>st</sup> respondent;
  3. That upon grant of prayer 2, the court be pleased to issue an order directing the Deputy Registrar of the court to execute the instruments of discharge of charge on behalf of the 1<sup>st</sup> respondent;
  4. That upon granting of prayers 2 and 3 above, the court be pleased to grant an order compelling the land registrar to register the discharge of charge in respect of the suit property in the official register of land; and
  5. That there be no order as to costs.



2. It is the applicant's case that the deceased died on 18<sup>th</sup> February 1994 and Paul Kimani Mbugua and Mary Wariara Mbugua were appointed as administrators in his estate. That the applicant's named property was charged for a sum of Kshs.80,350/=, money that was advanced to Ruby Njeri Mbugua, a former employee of Bank Indosuez. That in the course of time, the 2<sup>nd</sup> respondent acquired the 1<sup>st</sup> respondent. That the loan was fully repaid before Ruby Njeri Mbugua left the institution and the bank confirmed full repayment of the loan through its letter dated 29<sup>th</sup> January 1998.
3. The applicants stated that they wrote to the bank seeking discharge of the charge and they were asked to prepare the relevant documents which they sent to Bank Indosuez for signature. However, the bank informed them that it does not have local attorneys to execute the discharge of charge in the manner presented, thus necessitating the application herein. The personal representatives of the deceased deposed that it is necessary that the property is discharged to enable distribution of the estate of the deceased.
4. The application is unopposed.
5. The court directed that the application be canvassed by way of written submissions but none were filed.
6. The issue for determination is whether the orders sought through the application should be granted.
7. Paul Kimani Mbugua and Mary Wariara Mbugua are administrators of the estate of the deceased through Embu High Court Succession Cause No. E008 of 2022, vide grant issued on 31<sup>st</sup> May 2022. The suit property herein forms part of the estate of the deceased but it is encumbered through a charge registered in favour of Bank Indosuez. The loan amount has been fully repaid but the said bank stated that it does not have local signatories to sign the discharge of charge instrument which should be used to unencumber the property for purposes of succession.
8. The application herein has been made outside of the succession proceedings through the miscellaneous application herein. The discretion of this court under Article 159 of the Constitution allows it to make the order that the Deputy Registrar signs the document on behalf of an unavailable party in a transaction. The applicant has produced email correspondence between the advocates for the parties herein showing that the bank does not have signatories locally for purposes of discharge of charge.
9. In the end, I find that the application succeeds and the same is hereby granted as prayed. There shall be no order as to costs.
10. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 22ND DAY OF MAY, 2024.**

**L. NJUGUNA**

**JUDGE**

.....for the Applicant

.....for the 1st Respondent

.....for the 2nd Respondent

