



**In re Estate of Ibrahim M'Mbijiwe M'Munyua alias Mbijiwe s/o Munyua (Deceased)
(Succession Cause 14 of 2014) [2024] KEHC 5850 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5850 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 14 OF 2014**

EM MURIITHI, J

MAY 23, 2024

**IN THE MATTER OF THE ESTATE OF IBRAHIM M'MBIJIWE
M'MUNYUA ALIAS MBIJIWE S/O MUNYUA (DECEASED)**

BETWEEN

PATRICK KIRIGIA M'MBIJIWE PETITIONER

AND

GEOFFREY M MUGAMBI OBJECTOR

AND

IRENE KINANU KIRIMI APPLICANT

RULING

1. By a Notice of Motion under certificate of urgency dated 10/1/2024 brought under section 76 of the [Law of Succession Act](#), the applicant seeks:
 1. That this Honourable Court do issue an Order to revoke the written grant of representation to the estate of Ibrahim m'mbijiwe son of Munyua that was confirmed by the Honourable Court on 19th September 2019 and dated 14th October 2019 as the administrator Patrick Kirigia M'Mbijiwe did not comply with the order issued by the judge of the High Court of Kenya and transferred the land parcel Abogeta/U-Chure/319, Abogeta/U-Chure/327, Abogeta/U-Chure/1587 to his sons and to himself and not equal share as ordered noting the deceased had no land as alleged in the succession as the petitioner (Patrick Kirigia M'Mbijiwe) indicated son Geoffrey M.K Mugambi as our father and made the judge sign the order dated 14th October 2019. Our father's name is Goffrey Newton Kirimi Mugambi.
 2. That do apply the Honourable Court do issue an order that the applicant be allowed to represent the family of our deceased father and also be allowed to appoint a person capable



to represent the family as the Constitution of Kenya 2010 Chapter Four (4) Article 22 allows in order to recover properties being held by petitioner in irregular and illegal manner as we cannot hire law firm.

3. That the Honourable Court do issue an order to cite the administrator for contempt of the court order issued on 14th October 2019 as has demeaned the judgment.
 4. That the Honourable Court be pleased to issue inhibitions orders on the land parcel no Abogeta/U-Chure/327, Abogeta/U-Chure/319 and Abogeta/U-Chure/1587 to preserve the substance of this matter until this application is heard and determined.
 5. That the Honourable Court do issue another inhibition order on the land parcels no Abogeta/U-Chure/327, Abogeta/U-Chure/319 and Abogeta/U-Chure/1587 in order the petitioner shall not transfer/sell or act in any manner in order to preserve the substance of the matter until this application is heard and determined.
 6. That the Honourable Court do issue an order to Principal magistrate Law court at Nkubu to produce the order/decreed issued on 1967/1968 case the deceased – in this petition was ordered to pay auctioneers fees and surveyors fees during demarcation of land parcel Abogeta/U-Chure/327, Abogeta/U-Chure/319 and Abogeta/U-Chure/1587 and was unable to pay and Honourable Magistrate ordered for auction and failure to pay the debt as our late father Geoffrey Newton Kirimi Mugambi used his salary as was employee of County Council of Meru paid the money Ksh. 2,447 and above lands allocated to him by courts as the petitioner was a young boy.
 7. That the Honourable Court do issue an order after issuing orders 1-6 that the land parcels no Abogeta/U-Chure/327, Abogeta/U-Chure/319 and Abogeta/U-Chure/1587 all after resistant sub-divisions there do revert to the name of the objector/applicant for the beneficiaries of our late father Geoffrey Newton Kirimi Mugambi as petitioner concealed material facts to produce the order/decreed issued on 1967/1968 case – the deceased – in this petition was ordered to pay auctioneers fees and surveyors fees during demarcation of land parcels Abogeta/U-Chure/327, Abogeta/U-Chure/319 and Abogeta/U-Chure/1587 and was unable to pay and Honourable Magistrate ordered for auction to Honourable Court in order to defraud land from rightful beneficiaries and seriously violating Constitution of Kenya Chapter Four (4) Article 27 and children rights.
 8. That the Honourable Court be pleased to issue an order to struck out the name of Geoffrey Muriungi K. Mugambi (son of the petitioner in the order) issued on 14th October 2019 in the grant and is not our father.
 9. That the Honourable Court be pleased to issue an order this matter be heard by a mediator as constitution of Kenya 2010 requires chapter Four (4), Chapter ten (10) as is violated by the petitioner.
 10. That this Honourable Court be pleased to issue such further orders as will meet the end of justice.
 11. Costs of this summons be condemned to the petitioner.
2. The application is supported by the grounds on the face of it and an affidavit sworn by the applicant, on even date. She avers that since Michael Kungu Kigia knows all the issues of this case, he should be allowed to act for her and the other beneficiaries. She relies on the unopposed application filed in court on 11/3/2022 together with the annexures thereon. Since the petitioner has defrauded their late



father's land known as Abogeta/U-Chure/327, Abogeta/U-Chure/319 and Abogeta/U-Chure/1587, they shall not allow him any land unless he pays Ksh.20,000,000.

3. The applicant swore a supplementary affidavit on 12/2/2024 in support of her application.
4. The petitioner swore a replying affidavit on 7/2/2024. He avers that the application, whichever way it is looked at seriously wants in merits, is an afterthought, lacks justification, is not properly supported, is incompetent, fatally defective and is a classical abuse of the court process which should be dismissed. The application is a replica of the application dated 15/3/2022 and the applicant has no *locus standi* to bring this application since she is a grand daughter of the deceased herein and therefore not a beneficiary of the estate. The application dated 15/3/2022 has never been amended pursuant to the orders of this court of 2/6/2022, and substitution of Geoffrey M. K Mugambi (now deceased) has never been done. One Michael Kungu Kigia is a stranger to this court and as such, he has no authority to act for the applicant. He will suffer irreparable loss and damage since this matter has taken over one year without being heard. He is advised by his advocates that section 1B of the [Civil Procedure Act](#) mandates the court to handle all matters presented before it in a just, efficient, timely and cost effective manner. The applicant has been indolent and he should not be made to suffer as a result thereof as justice delayed is justice denied.
5. The petitioner filed a Notice of Preliminary Objection on 8/2/2024 raising 5 grounds that:
 1. This application is *sub judice* as there is a similar Application, which is a replica of the Application dated 15th March 2022 filed before this Honorable Court.
 2. The said Application raises similar issues as the current Application.
 3. The Applicant/Objector has no locus standi before this Honorable Court.
 4. The Objector/Applicant is on a forum shopping expedition lacking in precision and substance.
 5. The Objector/Applicant's actions are akin to an abuse of court process.
6. The applicant filed a list of authorities on 20/2/2024.
7. The application and the P.O were urged orally in court and a ruling reserved.

Analysis and Determination

8. The issue for determination is whether the preliminary objection has been properly raised.
9. What properly constitutes a preliminary objection has been defined times over including in the locus classicus case of *Mukisa Biscuit Company v Westend Distributor Limited* (1969) EA 696 as follows:-

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

10. This court in Meru Succession Cause No. 26/1988 *In the Matter of the Estate of Thomas Mbui Njenge Alias Thomas Nchenge (Deceased) David Mbuko T. Mbui v Susan Gacheri* VOL. 8 NO. 62 held that:

“In the circumstances, a preliminary objection should only be raised where there are no disputations on matters of facts by parties. Although parties did not address the Court on the import and tenor of a preliminary objection, this Court finds this to be an important matter which has the potential of either granting or divesting this Court with jurisdiction



to entertain the preliminary object which forms the subject of this Ruling. This Court cannot overlook the question of jurisdiction, even with respect to entertain the preliminary objection. Should this Court find that there are any disputations of fact which will require it to look at evidence adduced and interrogate factual issues, the Court will not have jurisdiction to entertain the preliminary objection.”

11. Section 6 of the [Civil Procedure Act](#) provides for *sub judice* as follows:

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed. Explanation.—The pendency of a suit in a foreign court shall not preclude a court from trying a suit in which the same matters or any of them are in issue in such suit in such foreign court.”

12. On 2/6/2022, the applicant in the application of 15/3/2022, Geoffrey M.K Mugambi sought leave to amend that application, and the court granted him 14 days to do so. On 5/7/2022, the court was informed that the amendment had not been done and it indulged the applicant. On 28/9/2022, the court learnt that the applicant has since died and it was apparent that he had to be substituted.
13. This court finds that the instant application and that of 15/3/2022 not only seek identical orders but they arise from the same set of facts and circumstances. Since both applications cite similar issues, a determination of the former would be binding on the latter, which would save on unnecessary duplication of work and costs.
14. The applicant herein ought to have filed an application for substitution of the deceased applicant instead of filing an entirely new application which is grounded on the same facts. It is at the hearing of the application for substitution when the court would determine whether the applicant indeed has locus standi.
15. This court is precluded by the doctrine of sub judice, from entertaining this application by virtue of the pendency of its replica filed earlier on in this court on 17th March, 2022.

Orders

16. Accordingly, for the reasons set out above, this court finds merit in the Petitioner’s Preliminary Objection dated 7/2/2024 and determines that it lacks jurisdiction to go into the merits of the applicant’s application dated 10/1/2024, and it shall, consequently, down its tools and strike out the application with costs to the petitioner.

Order accordingly.

DATED AND DELIVERED THIS 23RD DAY OF MAY, 2024.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Irene Kinanu, the Applicant.

Ms. Kerubo for Petitioner.

