



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Kenyariri Kenyariri (Deceased) (Succession Cause  
3 of 2018) [2024] KEHC 6006 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6006 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
SUCCESSION CAUSE 3 OF 2018  
PN GICHOHI, J  
MAY 23, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE KENYARIRI KENYARIRI DECEASED**

**BETWEEN**

**CHRISTOPHER O. KENYARIRI ..... 1<sup>ST</sup> PETITIONER**

**VINCENT MOSONGO KENYARIRI ..... 2<sup>ND</sup> PETITIONER**

**AND**

**EDWARD OBINO KENYARIRI ..... 1<sup>ST</sup> OBJECTOR**

**JAMES BICHAGE KENYARIRI ..... 2<sup>ND</sup> OBJECTOR**

**RULING**

1. There are to applications herein relating to the estate of the deceased. The first application is a Notice of Motion dated 24/04/2023 and filed on even date by Dr. Christopher Orina Kenyariri (herein referred to as the 1<sup>st</sup> Petitioner) against Edward Obino Kenyariri (1<sup>st</sup> Objector ) and James Bichage Kenyariri (herein referred to as the 2<sup>nd</sup> Objector) seeking orders that:
  1. Spent
  2. The Orders given on 24/02/2021 and issued on 24/03/2021 be set aside and the inhibition on LR Nos. Nyaribari Chache/ Keumbu/6027,6028,6029,6030,6031 and 6032 be lifted and/or removed by the Court.
  3. Costs of the application be provided for.
2. In support of the application is the Affidavit sworn on 24/04/2023 by Dr. Christopher Orina Kenyariri. He depones that on 24/02/2021 this Court issued Orders inhibiting various land reference numbers. He states that the reason the proceedings were stayed has been achieved since the application



- filed at the Court of Appeal by the 2<sup>nd</sup> Objector has been disposed of and dismissed. That it is only fair that this application is allowed.
3. The 2<sup>nd</sup> objector, opposed that application. He filed a Replying Affidavit dated 8/05/2023 where he depones that the application dated 24/04/2023 is defective and baseless, frivolous and an abuse of the court process.
  4. He states that the inhibitions orders that were issued on 24/02/2021 by Justice Ndungu on LR Nos. Nyaribari Chache/ Keumbu/6027,6028,6029,6030,6031 and 6032 were resultant to the fact that the Applicant informed the court that he was a bona fide administrator and he was duly appointed by the Court of Appeal. That the Applicant obtained fraudulently titles Nyaribari Chache/ Keumbu/ 6027 & 6028 for Makori Samarere who was the 8<sup>th</sup> Respondent in the Court of Appeal and that there is an ongoing case in lower court between Makori Samarere and his Sons wherein the Applicant is an interested party.
  5. He further states that the Orders were issued after the Court realised that the titles were procured without a grant. That if the Court is going to set aside the inhibition orders issued, it will be tantamount to giving the 1<sup>st</sup> Petitioner judicial blessings to fraud committed by the Petitioner and hence intermeddling with the estate of the deceased.
  6. The 2<sup>nd</sup> application is dated 08/05/2023 and filed on 09/05/2023 by the 2<sup>nd</sup> objector, James Bichage Kenyariri. In support of the application is an Affidavit he swore on 08/05/2023. He seeks orders that:-
    1. Cancellation be issued to title deed on LR Nos. Nyaribari Chache/ Keumbu/6027,6028,6029,6030,6031 and 6032 for they were fraudulently obtained without a grant as provided by Chapter 160 of the Laws of Succession.
    2. This Court Orders for the cancellation of the said titles for they were issued fraudulently by misusing a Court of Appeal Order which talked of an administrator and yet there is no administrator of the Estate of Kenyariri Kenyariri.
    3. Titles Nyaribari Chache/ Keumbu/ 6027 & 6028 were issued by the Kisii County Land Registrar in Collusion with the 1<sup>st</sup> Petitioner while the 8<sup>th</sup> Respondent ( Makori Samarere) who is alive did not participate as alleged by the 1<sup>st</sup> Petitioner.
  7. On 24/05/2023, the 1<sup>st</sup> Petitioner, Dr. Christopher Orina Kenyariri filed grounds of opposition to the application dated 18/05/2023 wherein he opposes the application dated 8/5/2023 on grounds that the orders sought are *res-judicata* and that this Court lacks jurisdiction to entertain the application by the 2<sup>nd</sup> Objector. He simultaneously filed submissions dated 18/05/2023 expounding on the grounds of opposition.
  8. The 2<sup>nd</sup> Objector filed submissions dated 19/06/2023 giving chronology of the matter involving the estate of the deceased and emphasising the contents of the two applications , affidavits and grounds of opposition.

### **Determination**

9. This Court has perused the file and considered the pleadings and parties rival affidavits in support of their opposing applications and submissions which reiterated the contents of parties' respective affidavits. The main issue for consideration is whether this Court can remove the Inhibition placed on LR Nos. Nyaribari Chache/ Keumbu/6027,6028,6029,6030,6031 and 6032.



10. The record shows that while appreciating that there were orders of the Court of Appeal which directly related to the dispute before him and which had not been set aside or reviewed, A.K. Ndung'u J granted the inhibition Orders on 24/2/2021 as follows:-
  - a. In the meantime, these proceedings are stayed pending the Outcome of the application to be made in the Court of Appeal.
  - b. An inhibition be registered against title numbers LR Nos. Nyaribari Chache/Keumbu/6027,6028,6029,6030,6031 and 6032 pending the further Orders from the Court of Appeal or from this Court.
11. It is noted that there was a consent order in the Court of Appeal being in Kisumu Civil Appeal No. 5A of 2013 which was disposed of by a consent that:-
  1. The 8<sup>th</sup> Respondent, Makori Samarere together with the administrator of the estate of Kenyariri Kenyariri, shall procure the services of government surveyors to ascertain the boundaries of the three (3) portions of the land.
  2. Upon the boundaries being ascertained, the 8<sup>th</sup> Respondent Makori Samare, being the only surviving owner of the land shall obtain the titles for each beneficiary for each portion of land.
  3. Each party shall bear his own costs for the Appeal.
  4. The Appeal is accordingly allowed.”
12. The 2<sup>nd</sup> Objector herein filed a Notice of Motion dated 30/03/2021 in the Court of Appeal in Kisumu Civil Application No. 5A of 2013, seeking orders among them being:-
  1. That the Honourable Court be pleased to vary, review and set aside the consent order made on 15<sup>th</sup> November, 2016.
  2. That the Honourable Court be pleased to order that land titles NyaribariChache/Keumbu/6027,6028,6029,6030,6031 and 6032 be cancelled and or revoked and the same revert to the original owners.
  3. That the Honourable Court be pleased to order that Dr. Christopher Orina Kenyariri was not/ has never been appointed as administrator by the Honourable Court of Appeal.
13. That application was opposed by Dr. Christopher Orina Kenyariri ( 1<sup>st</sup> Petitioner herein). The history of the matter and this estate was extensively captured by the parties therein including the fact that High Court had issued inhibition orders, now the subject of the Petitioner's Application before this Court.
14. In its ruling dated 17/03/2023, the Court of Appeal acknowledged that the grant of letters of administration appointing Dr. Kenyariri as the Administrator were issued by High Court in Nairobi in Succession Cause No. 490 of 2016.
15. The Court dismissed the application in its entirety and with costs to the Respondents. It declined to cancel the titles. Specifically, the Court held:-

“Fourth, the consent order has already been executed anyway. It would be an exercise in futility to try to undo that which has already happened anyway. It is important to recall that the consent order was made more than eight years ago. In the intervening period, the order was acted upon; the boundaries re-set; land subdivided and title deeds issued. It is highly possible that the parcels have found their way to third parties.”



16. It is therefore clear that the Objector's application dated 08/05/2023 is *res judicata*. This Court lacks jurisdiction to entertain the issues therein and therefore , that 2<sup>nd</sup> Objector's application must fail.
17. The Petitioner herein moved this court in order to pave way for the continuation of the proceedings that were stayed pending the determination of the matter before the Court of Appeal.
18. Rule 73 of the *Probate and Administration Rules* provides that:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
19. With the Court of Appeal having disposed of the issues before it and having dismissed the Objector's appeal , it is only fair and in the interest of justice and also in the interest of the beneficiaries of the Estate of Kenyariri Kenyariri to benefit from the Estate.
20. From the foregoing and in conclusion, this Court makes the following orders:-
  1. Objector's application dated 08/05/2023 be and is hereby dismissed.
  2. The Petitioner's application dated 24/04/2023 be and is hereby allowed.
  3. The Orders given by High Court on 24/02/2021 and issued on 24/03/2021 be and are hereby set aside.
  4. The inhibition on LR Nos. Nyaribari Chache/ Keumbu/6027,6028,6029,6030,6031 and 6032 be and is hereby lifted.

**DATED, SIGNED AND DELIVERED (VIRTUALLY) AT KISII THIS 23<sup>RD</sup> DAY OF MAY , 2024.**

**PATRICIA GICHOHI**

**JUDGE**

**In the presence of:**

Dr. Christohper Orina Kenyariri - 1<sup>st</sup> Petitioner

James Bichage Kenyariri- 2<sup>nd</sup> Objector

N/A for Osano Kenyariri

Ruto/ Aphline- Court Assistant

