



**In re Estate of Manunga Ngoci (Deceased) (Succession Cause
521 of 2014) [2024] KEHC 5558 (KLR) (8 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5558 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
SUCCESSION CAUSE 521 OF 2014**

LM NJUGUNA, J

MAY 8, 2024

IN THE MATTER OF THE ESTATE OF MANUNGA NGOCI (DECEASED)

BETWEEN

KIVURIA MANUNGA APPLICANT

AND

PATRICIO NJIRU KIRANGI 1ST RESPONDENT

PRISCILLA GATUI KIRANGI 2ND RESPONDENT

RULING

1. The applicant has filed summons dated 16th November 2023 premised on the grounds on its face and in the supporting affidavit thereof, seeking orders that:
 1. Spent;
 2. That the court does order that pending hearing of the application, Plot No. 22 Siakago should not be sold or transferred to a 3rd party;
 3. That the respondent be compelled to pay the applicant Kshs.800,000/= being half the value of the property; and
 4. That the court does order that the property Plot No. 22 Siakago be jointly sold and the applicant be given Kshs.800,000/= being half of its valued price.
2. The applicant stated that the mediation settlement agreement dated 12th February 2020 was adopted as this court's order dated 25th September 2020. That in the said order, the applicant was compelled to vacate Plot No. 22 Siakago where he used to receive half of the rent but since the order, he doesn't receive any rent. That the order also stated that the applicant be given half of the value of the property which was valued at Kshs.1,600,000/= but this has since not happened, and the order has not been



- vacated, reviewed or appealed against. That there is a risk of the property being sold off to a third party without the respondents paying him the money ordered by the court and if the court make its final orders without this payment being made, the applicant will suffer detriment. He urged that if the respondents are not able to pay the money, the court has power to order that the property be sold for its value and the applicant be paid his share of it.
3. Each of the respondents filed replying affidavits. The 1st respondent deposed that he is still serving a sentence in prison but he had initiated the succession proceeding herein before he was incarcerated. That he was granted a certificate of confirmation of grant and the issues of distribution of the estate were the subject of mediation where an agreement was reached. That following the order emanating from the mediation settlement agreement, the applicant indeed vacated Plot No. 22 Siakago and stopped taking rents but the 2nd respondent continued to collect rent. That she disregarded the court order to share the costs of the building with the applicant. He urged that the rents ought to have been collected and shared with the applicant until payment in full.
 4. The 2nd respondent, in her replying affidavit, stated that she is a grandchild of the deceased and that her father, Kirangi Manunga was given Plot No. 22 Siakago by the then Embu County Council. That her father allowed her grandfather, the deceased herein, to collect rents from the said property but it did not belong to him. That after the death of the deceased, the applicant continued collecting half of the rent from the property until this court stopped him in 2020 through its order. She deposed that 3 of the sons of the deceased, including the applicant, in Civil Suit No. 245 of 1989, swore affidavits confirming that the property does not form part of the estate of the deceased herein.
 5. It was her case that regardless, the applicant continued to collect rent on the property after the death of her father Kirangi Manunga. That in any event, the children of the deceased owe her Kshs.1,600,000/= being the value of the property. She stated that through Civil Suit No. 245 of 1989, the deceased herein never claimed ownership of the said property and that she does not agree with the mediation settlement agreement which she executed without full knowledge of its contents. That in Civil Suit No. 245 of 1989, the applicant, in his affidavit dated 24th June 2004 stated that Plot No. 22 Siakago belongs to Kirangi Manunga, her father.
 6. The parties agreed to canvass the application by way of written submissions and they all complied save for the 2nd respondent.
 7. The applicant submitted that the orders herein are sought because the applicant failed to obey an order of the court reached through a mediation settlement agreement which was adopted as an order of the court. That the 2nd respondent is telling lies that she did not know the contents of the agreement since she was present at the proceedings. It was his submission that when the value of the property was established, the applicant should have been paid a lumpsum of the money since if it is staggered, he might live his whole life before he receives the full amount. He urged the court not to allow its orders to be made in vain and that he is deserving of the orders sought.
 8. The 1st respondent stated that the property belonged to Kirangi Manunga while the building was constructed by the deceased herein, hence the agreement that the families equally share the cost of the building. That during the mediation proceedings, he was representing the family of Kirangi Manunga while the applicant represented the family of the deceased herein. That selling the property was not part of the agreement at mediation but the money claimed by the applicant was meant to come from the rent proceeds collected from the building. On the applicant's apprehension that he might die before the money is paid to him, he submitted that another administrator will be put in place to continue with the case. He concluded that there is enough proof to show that the land was owned by Kirangi Manunga.



9. The issue for determination is whether the application has merit.
10. The parties herein were all present during mediation proceedings and they all signed the mediation settlement agreement dated 12th February 2020. The settlement agreement was adopted as an order of the court on 25th September 2020. Pursuant to the order, the property in question was valued by Upcountry Valuers and found its value to be Kshs.1,200,000/=. The court order stated inter alia, that the cost of the buildings will be shared between the parties at mediation, who were the 2nd respondent herein as the claimant/plaintiff and the applicant herein as the defendant.
11. Through the pleadings herein, it has been alleged that all the other orders have been complied with save for the order for payment of the sum of Kshs.800,000/= being half of the value of the buildings. It is important to note that the mediation settlement agreement, having already been adopted as the order of the court, bears the strength of any other court order. Rule 34 and 36 of the [Civil Procedure \(Court-Annexed Mediation\) Rules, 2022](#) provide that a mediation settlement agreement may be adopted as an order of the court and should be enforced in like manner as any other order of the court. All orders of the court are solemn pronouncements and a party who chooses to disobey them should be held in contempt.
12. In the case of [Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County Ex Parte Stanley Muturi](#) (2018) eKLR, the court held thus;

“Court orders are not meant for cosmetic purposes. They are serious decisions that are meant to be and ought to be complied with strictly. As was held in *Teacher’s Service Commission v Kenya National Union of Teachers & 2 Others* Petition No. 23 of 2013:

“The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt of court proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed. A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.”

13. From a perusal of the 1st respondent’s replying affidavit, his case supports the applicant’s arguments. The 2nd respondent, who was the claimant/plaintiff in the mediation proceedings and who also executed the mediation settlement agreement, stated that she signed the agreement without knowledge of its contents. She stated this in her replying affidavit but she has never raised it through a formal application citing a vitiating factor as provided for under Rule 39(3) of the [Civil Procedure \(Court-Annexed Mediation\) Rules, 2022](#). The order of the court to pay the amount of Kshs.800,000/= was made on 25th September 2020 and to date, the money is owing. Having considered the application, the following orders shall issue:



1. The 2nd respondent is hereby ordered to pay Kshs.800,000/= to the applicant in accordance with the order of this court dated 25th September 2020 within 60 days of this ruling; and
2. If order (1) hereinabove is not complied with, the property shall be sold and half the value of the proceeds from the sale shall be paid to the applicant.

14. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 08TH DAY OF MAY, 2024.

L. NJUGUNA

JUDGE

..... for the Applicant

..... for the 1st Respondent

..... for the 2nd Respondent

