



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Lawrence Nginyo Kariuki (Deceased) (Succession Cause 16 of 2020) [2024] KEHC 6091 (KLR) (7 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6091 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 16 OF 2020
DO CHEPKWONY, J
MAY 7, 2024**

BETWEEN

JAMES ANTHONY KARIUKI APPLICANT

AND

SILAS MACHARIA KARIUKI 1ST RESPONDENT

JANE ALICE WAMBUI KIRAGU 2ND RESPONDENT

SARAH MUKUHI NGINYO KARIUKI 3RD RESPONDENT

SCHOLASTSICA NJERU KARIUKI 4TH RESPONDENT

ROSE WANJIRU KARIUKI 5TH RESPONDENT

MARGARET WANGARI NGINYO KARIUKI 5TH RESPONDENT

ALEX NDORIA KARURI 6TH RESPONDENT

AUSTINE WACHIRA KARIUKI 7TH RESPONDENT

WINFRED KARIUKI 8TH RESPONDENT

RULING

1. The 3rd Respondent, Sarah Mukuhi Nginyo Kariuki and 5th Respondent Rose Wanjiru Kariuki moved this court vide two applications dated 19th and 20th February, 2024 under Certificate of Urgency principally seeking inter-alia for orders that:-

- a. Pending the hearing and determination of the application dated 19th February, 2024, the Honourable Court be pleased to issue an interim order staying the execution of the Ruling and Order issued on 26th January, 2024 and more



specifically, to stay the appointment of Brian Forensics LLP and bar them from continuing or taking any further steps in carrying out a forensic audit of the Estate of Lawrence Nginyo Karuiki.

b. The Honourable Court be pleased to review, vary and set aside its Ruling and Order issued on 26th January, 2024 appointing the Firm of Brian Forensic LLP to carry out a forensic audit of the Estate of Lawrence Nginyo Karuiki and filed its report within sixty (60) days from 26th January, 2024.

2. On 20th February, 2024, the Notice of Motion application dated 19th February, 2024 was placed before this court as the duty court and directions issued that parties file and serve their respective responses and written submissions. Later, on 23rd February, 2024, the court issued interim orders sought in the application dated 19th February, 2024 vide a

Notice of Motion application dated 20th February, 2024.

3. Upon being served with the two applications, the Firm of Victor Lee Advocates filed a Notice of Motion application dated 26th February, 2024 on behalf of James Antony Kariuki, the Applicant seeking:-

a. Spent;

b. That this application and the file be placed before the Hon. Lady Justice Chepkwony for purposes of vacating of her orders dated 20th and 22nd February, 2024.

4. The application dated 26th February, 2024 is supported by grounds in the affidavit sworn by Grado Victor Marachi.

5. On 27th February, 2024, the matter was placed before the Hon. Justice Mshila and she directed that the same be placed before this court for directions. The matter then came up before this court on 9th April, 2024 and after brief submissions by counsel for the parties present the court directed the parties who had not filed their responses to the application to do so and for all the parties to canvass the said application by way of written submissions. The 7th, 8th, 9th and 10th Respondents filed submissions in support of the application whilst the 1st, 2nd, 3rd, 4th, 5th and 6th Respondents filed submissions in opposition thereof.

6. The Applicant and the others in support of the application maintained that this court had no judicial authority, power or jurisdiction to address the application dated 19th and 20th February, 2024 or any other application that would be filed in this matter since there were express directions from the Honourable Justice vide a letter dated 14th June, 2023 that the matter be heard and determined by Honourable Justice Mshila because of its contentious nature with a number of Judges having recused themselves from hearing the same before. They also submitted that the orders were made based on material non-disclosure since 3rd and 5th Respondents had not disclosed to the court that they had filed a similar application in which they were denied the said interim orders. Further, it was submitted that the Respondents had been denied the same orders and had filed an appeal challenging the decision by Hon. Mutuku for a forensic audit to be conducted on the Estate of the deceased. They described this as a habit of forum shopping and guessing which court can grant favourable orders.

7. On the other hand, the parties opposed to the application submitted that while the Honourable Chief Justice directed Honourable Justice Mshila to hear and determine the matter herein, there is nowhere in the said letter where the Honourable Chief Justice granted Honourable Justice Mshila exclusive,



absolute and unshared mandate to singly deal with all issues, including applications that may arise in the course of the hearing and determination of this matter. That in so directing, the Honourable Chief Justice was aware that Judges go on leave, or are occasionally absent owing to illness or other extenuating circumstances, may be away from their station on official duty or occasions. Because of this, there is a laid down procedure that ensures that urgent matters are placed before the duty of Judge for consideration and where appropriate issuance of interim directions and or orders where appropriate as the merits of a case may dictate. The Respondents submitted that Section 5 of the *Judicial Service Act* and Section 13 (4) of the *High Court (Organisation and Administration) Act*, 2015, vests in the Honourable Chief Justice administrative power to assign duties to the Deputy Chief Justice, the President of the Court of Appeal, the Principle Judge of the High Court and Chief Registrar of the Judiciary as well as exercise general direction and control over the judiciary. However, it is also their submission that there is no law in this country that grants the Honourable chief Justice the mandate to confer, bestow and or assign authority or jurisdiction to a specific court or Judge(s) to hear and determine any dispute. They then contended that the administrative powers of the Honourable Chief Justice should not be confused with jurisdiction of a court as conferred by dint of Article 165(4) of *the Constitution* of Kenya, 2010.

8. The 3rd and 5th Respondents cited a number of authorities where courts have pronounced themselves on the question of jurisdiction of a court. They even singled out the two scenarios where the Chief Justice assigns a file to a High Court Judge or a bench of High Court Judges but categorically submitted that even in such scenario, the Judge(s) will proceed to exercise and execute the original exclusive jurisdiction of the original matter to the exclusion of other courts and or Judges and this jurisdiction was conferred by *the Constitution* is never taken away from the High Court.
9. Further, opposing parties maintained that a High Court is not an individual, but is an institution in an inanimate body that must be run, activated, managed and controlled by animate organs authorised by law under the title of Judges. And it is these judges who are empowered by *the Constitution* to exercise authority, jurisdiction and power conferred on the High Court as a constitutional institution or body and not on the individual Judge.
10. The 3rd and 5th Respondents went on to submit that the Electronic Case Management Practice Directions, 2020 regulate the manner in which pleadings are filed by Parties through the Judiciary e-Filing Portal whereby once pleadings are filed and filing fees duly paid, the e-Filing Portal is configured in such a way that it will directly send the filed pleadings to the appropriate court and Judge to handle the matter. They went on to submit that the filing party has no control over that process and neither can he/she manipulate which Judge will deal with his/her matter or application.
11. Also, with regard to applications filed under Certificate of Urgency, the Respondents submitted that the same is done in compliance with the structure provided for under Directions 19 of the Practise Directions and Standardization of Practise and Procedure in the High Court, 2021 alongside Sections 6 and 7 of the High Court (Organisation and Administration) Act which provide that the Principal Judge of the High Court and by extension the Presiding Judge of any High Court Station or Division is mandated to be responsible for the general management and distribution before the High Court among the Judges in a court station or divisions, which entail the assignment of a Duty Judge to deal with applications filed under Certificate of Urgency for each day of a court's calendar. And that in dealing with such applications, the power is donated by the proviso of Order 51 Rule 3 of the *Civil Procedure Rules*, 2010 and Directions and Standardization of Practise and Procedure in the High Court, 2021 to grant and or issue ex-parte orders and directions.



12. It is worth-noting that the parties also submitted on issues this court finds that by delving in them, it would run the risk of determining the applications dated 19th and 20th February, 2024 without granting the parties an opportunity to substantively ventilate their respective positions on the same.

Determination

13. I have carefully read through and taken into account the prayer being sought by the applicant in the application dated 26th February, 2024, the responses by the Respondents and the sentiments in each party's submissions. I find the only issue arising thereof for determination is whether this court can set aside its orders issued on 20th and 22nd February, 2024?
14. The orders of 20th and 22nd February, 2024 relate to a Notice of Motion application dated 19th February, 2024 wherein the court directed that the application be served upon the other parties to enable them respond and for all the parties to canvass the application by way of written submissions. On further application dated 20th February, 2024, the court issued an order that pending the hearing and determination of the application inter-partes there be a stay of execution of the ruling dated 26th January, 2024 especially in respect of the appointment of Brian Forensic LLP from carrying out the forensic audit. A reading of the said orders clearly expressed that the same would subsist pending the hearing and determination of the Notice of Motion application dated 19th February, 2024.
15. I have considered the arguments by all parties in regard to whether or not to vacate the orders issued on 20th and 22nd February, 2024 and find that the sole reason for which this court is being asked to vacate them is the argument that it lacked the judicial authority and jurisdiction to deal with the matter without directions from the Honourable Chief Justice authorising/directing this court to handle the matter. It has been submitted by the Applicant that the suit herein has been controversial, leading to the recusal of Judges who have previously handled the matter hence the directions by the Honourable Chief that Honourable Justice Mshila hears and determines the same. According to the Applicant, all judicial dealings in the matter should be directed by the said Judge.
16. The Applicant and other parties have referred this court to a letter dated 23rd June, 2023, which communicated the Chief Justice's directions for the matter to be heard and determined by the Honourable Justice Mshila. I have read and appreciated the contents of the said letter and indeed confirm that the Honourable Chief Justice directed that Honourable Justice Mshila hears and determines the matter.
17. Having so noted, I wish to state that in handling the application dated 19th and 20th February, 2024, this court was exercising the jurisdiction conferred to it as a High Court under Article 165(3) of *the Constitution*,

which provides thus:-

[3]. "Subject to clause (5), the High Court shall have—

- a. unlimited original jurisdiction in criminal and civil matters;
- b. jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
- c. jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;



- d. jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—
 - i. the question whether any law is inconsistent with or in contravention of this Constitution;
 - ii. the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
 - iii. any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
 - iv. a question relating to conflict of laws under Article 191; and
- e. any other jurisdiction, original or appellate, conferred on it by legislation.

18. Apart from exercising the unlimited jurisdiction conferred to it in civil matters by the above provision, the court was also alive to the provisions of the High Court (Organisation and Administration) Act, the Regulations and Directions of the Electronic Case Management Practise Directions, 2020, the directions under the Practise Directions on Standardization of Practise and Procedure in the High Court, 2021 and the Civil Procedure Rules with regard to dealing with applications under Certificate of Urgency, and issuance of *ex parte* orders or directions therein.

19. Section 5 of the High Court (Organisation and Administration) Act provides:-

“[5]. Jurisdiction of the Court

The Court shall exercise—

- (a) the jurisdiction conferred to it by Article 165(3) and (6) of *the Constitution*; and
- (b) any other jurisdiction, original or appellate, conferred to it by an Act of Parliament.

20.

(21) Section 6 thereof goes on to state that:-

[6]. Principal Judge

- (1) The Principal Judge shall be responsible to the Chief Justice for—
 - (a) the overall administration and management of the Court;
 - (b) ensuring the orderly and prompt conduct of the business of the Court;
 - (c) *the constitution* of benches of two or more judges in consultation with the Chief Justice; and
 - (d) undertaking of such other duties as may be assigned by the Chief Justice.
- (2) The Principal Judge shall be elected in accordance with Article 165(2) of *the Constitution*.



- (3) The Chief Justice shall make Rules for the election and removal of the Principal Judge.
- (4) In the absence of the Principal Judge or in the event of a vacancy in the office of the Principal Judge, the Chief Justice shall appoint an acting Principal Judge, from amongst the presiding judges in Nairobi, to act as the Principal Judge for a period not exceeding sixty days, with effect from the date of appointment.
- (5) The chief Registrar shall designate a chief officer and such other members of staff as are necessary to facilitate the discharge of the functions of the Principal Judge.

And Section 7 then provides:-

[7]. Presiding Judges

1. A Presiding Judge, whether of a station or division, shall be responsible to the Principal Judge for the—
 - (a) implementation of strategic and policy guidelines;
 - (b) discharge of administrative functions in consultation with Principal Judge;
 - (c) general management and distribution of business before the Court among the judges in a court station or a division;
 - (d) facilitation of the efficient functioning of the station or division;
 - (e) facilitation of linkages and effective communication between the court and the court users; and
 - (f) facilitation of the use of effective information communication technology in the respective station or division.
- (2) A Presiding Judge shall be the Chairperson and convener of the Court User Committee in the station.
- (3) A Presiding Judge shall be responsible to the Principal Judge for—
 - (a) the supervision of all the subordinate courts, tribunals and other bodies falling within the regions designated under section 12(3) to be under a station or division;
 - (b) co-ordination of the public relations and promotion of goodwill of the Court; and
 - (c) any other matter that the Principal Judge may direct.

21. Directions 19 of the Practise Directions on Standardization of Practise and Procedure in the High Court, 2021 provides:-

[19]. Application under Certificate of Urgency



- i. Applications filed under Certificate of urgency shall be considered by the Judge at the earliest opportunity. However, matters filed after 12.00pm may be considered by the Judge on the next working day.
 - ii. The Court may in its discretion, issue orders/directions without the attendance of the advocates or parties.
 - iii. Where the attendance of parties/advocates is necessary, the court shall notify the parties/advocates to appear.
 - iv. Hearing dates for applications certified urgent by a Judge, shall be fixed by the Judge.
22. Order 51 Rule 3 of the Civil Procedure Rules also provides:-
[Orders 51,rule 3.] Notice to parties.
- [3]. No motion shall be made without notice to the parties affected thereby: Provided, however, that the court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order ex parte upon such terms as to costs or otherwise, and subject to such undertaking, if any, as to the court seems just, and any party affected by such order may move to set it aside.
23. It goes on without saying that the purpose or spirit behind these directions, regulations and rules is to avoid any vacuum in the operations of a court(s). A court does not close because a Judge is not there. Files belong to every or any Judge serving and that is why even where there is only one Judge in a station, a file can be moved to the nearest court for any issue among them to be address by the Judge therein. The purpose of this being to do justice and avoid injury or prejudice to any party in any suit.
24. It is not in dispute that in the week of 19th February to 23rd February, 2024, Honourable Lady Justice Mshila was attending a Head of Courts Consultative Meeting in Naivasha and this court was designated as the Duty Court for Kiambu High Court. Sitting in this court as the Duty Judge, I was mandated to exercise the jurisdiction of the High Court on all applications filed under Certificate of Urgency, the 3rd and 5th Respondents' applications of 19th and 20th February, 2024 included. This was based on the expectation that all applications filed under Certificate of Urgency be addressed in a timely manner, and appropriate orders aimed at avoiding undue injury or prejudice to any party issued.
25. This court reiterates that it appreciates the directions in the letter dated 23rd June, 2023 where the Honourable Chief Justice directed this matter to be heard and determined by Honourable Justice Mshila for it was meant to achieve administrative efficiency and expedition in the matter. However, the court wishes to clarify that in issuing the orders it did on 20th and 22nd February, 2024, it was not taking over the matter from the Hon. Justice Mshila. The interim orders were only meant to maintain and or preserve the substratum of the applications dated 19th and 20th February, 2024 so as not to render them nugatory or a mere academic exercise. This was after a consideration had been taken of the averments in the Supporting Affidavit of the Applicants. The said interim orders are not the end of the applications. Hon. Justice Mshila is still seized of the matter as directed by the Hon. Chief Justice and still reserves the judicial discretion to substantively address the application upon considering the evidence that will be tendered by either party in their arguments for and against the said applications, subject to or at the convenience of her diary. After all, the prayer seeks to review, vary and or setting aside of the ruling and order issued by the Honourable Judge on 26th January, 2024. The court has not conclusively inquired into the reviewed, vacated or stayed these orders.
26. For the reasons given above, this court is not persuaded that a case has



been established to warrant the orders sought in the application dated 26th February, 2024 and declines the invite to vacate the orders issued on 20th and 22nd February, 2024.

27. Consequently, the Notice of Motion application dated 26th February, 2024 is dismissed with no orders as to costs.
28. In regard to the directions by Honourable Justice Mshila on 27th February, 2024, the parties are directed to take a mention date for further directions before court No.1 from the Registry.

It is so ordered.

RULING DELIVERED, DATED AND SIGNED AT KIAMBU THIS ...7THDAY OF ... MAY ..., 2024.

D. O. CHEPKWONY

JUDGE

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