



REPUBLIC OF KENYA



**In re Estate of Mariam Muthoni Njuguna alias Miriam Muthoni Njuguna (Deceased)
(Succession Cause E057 of 2021) [2024] KEHC 5373 (KLR) (2 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5373 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE E057 OF 2021**

SM MOHOCHI, J

MAY 2, 2024

**IN THE MATTER OF THE ESTATE OF MARIAM MUTHONI NJUGUANA
ALIAS MIRIAM MUTHONI NJUGUNA (DCEASED)**

BETWEEN

ALICE NGENDO CHEGE APPLICANT

AND

MORRISON NGUGI RESPONDENT

RULING

1. The Applicant herein moved Court vide Chamber Summons Application dated 23rd January, 2024 seeking:
 - i. Spent
 - ii. That this Honourable Court be pleased to issue an order directing the Land Registrar, Nakuru to dispense with the production and/or surrender of the original title deed of parcel known as Kampi ya Moto Menengai Block 1/1731 in registration of mutation and transmission documents as per Certificate of Confirmation of Grant issued on 13th July, 2023.
 - iii. That the costs of the Application be provided for.
2. The Application is Supported by the Affidavit of Alice Ngendo Chege Sworn on 23rd January, 2024 where she averred that she is the Administrator of the estate of the deceased and that the Respondent is a son to the deceased and also a beneficiary of the estate of the deceased. She stated that she was issued with the rectified letters of administration on 13th July, 2023 and confirmed on the same date.
3. She deponed that on 27th September, 2023 the Court directed that the Respondent does surrender the original title to Kampi ya Moto Menengai Block 1/1731 but the Respondent has blatantly refused to



surrender the original title which is in his custody despite service and knowledge of the Court order. She added that she has subdivided the land and there is a mutation thereto but she is unable to complete registration without the original title.

4. She also averred that there has been constant conflict between the Respondent and one Isaac Gichina Njuguna over Kampi ya Moto Menengai Block 1/1731 which they are meant to share. That all the other assets of the deceased have already been distributed save for Kampi ya Moto Menengai Block 1/1731. She contended that it would be in the interest of justice that the orders sought do issue as there is need to wind up the distribution of the estate.
5. The application is unopposed despite service of the same.
6. The Court on 15th February, 2024, directed that the Application be disposed by way of written submissions. Neither party's submissions are on record.

Analysis and Determination

7. Having considered the application and at the applicable law. Section 31 of the [Land Registration Act, 2012](#) provides as follows: -

Production of certificate.

31.

- (1) If a certificate of title or a certificate of lease has been issued, then, unless it is filed in the registry or the Registrar dispenses with its production, it shall be produced on the registration of any dealing with the land or lease to which it relates, and, if the certificate of title or the certificate of lease shows all subsisting entries in the register, a note of the registration shall be made on the certificate of title or the certificate of lease.
- (2) Where the disposition is a transfer, the certificate shall, when produced, be cancelled, and in that case a new certificate may be issued to the new proprietor.
- (3) Where the disposition is a charge, the certificate shall be delivered to the chargee.

8. Section 33 of the [Land Registration Act](#), which deals with lost or destroyed certificates. It states as follows: -

33.

- (1) Where a certificate of title or certificate of lease is lost or destroyed, the proprietor may apply to the Registrar for the issue of a duplicate certificate of title or certificate of lease, and shall produce evidence to satisfy the Registrar of the loss or destruction of the previous certificate of title or certificate of lease.
- (2) The Registrar shall require a statutory declaration to be made by all the registered proprietors, and in the case of a company, the director, where property has been charged, the chargee that the certificate of title or a certificate of lease has been lost or destroyed.
- (3) If the Registrar is satisfied with the evidence proving the destruction or loss of the certificate of title or certificate of lease, and after the publication of such notice in the Gazette and in any two local newspapers of nationwide circulation, the Registrar may issue a duplicate certificate of title or certificate of lease upon the expiry of sixty



days from the date of publication in the Gazette or circulation of such newspapers; whichever is first.

- (4) If a lost certificate of title or certificate of lease is found, it shall be delivered to the Registrar for cancellation.
- (5) The Registrar shall have powers to reconstruct any lost or destroyed land register after making such enquiries as may be necessary and after giving due notice of sixty days in the Gazette.

9. The Applicants grievance is not a lost or destroyed certificate; it is the Respondent who has failed and/refused to deliver the certificate to effect a transmission. A look at Section 31 shows that the Registrar may dispense with the production of the original certificate, although generally, the original needs to be produced for him to proceed to register the transmission. This is a classical instance where a party to a succession cause antagonistically refused to surrender title for transmission. The conduct constitutes intermeddling.
10. In *Morris Mwiti Mburugu v Denis Kimantbi M'Mburugu* [2016] eKLR, the Court while espousing on intermeddling held that:

“From the foregoing, it is clear, and I so hold, that where any person interferes with the free property of the deceased or deals with an estate of a deceased person contrary to the provisions of sections 45 and 82 of the *Act*, that is intermeddling, is unlawful and cannot be protected by the Court. The transaction is subject to be nullified and set aside at the instance of the innocent beneficiaries who may have been affected by the act but were not involved in the same.”

11. This Court is persuaded that, it is only fair that the Land Registrar be ordered to dispense with the production of the original certificates while effecting the transmission(s) in this probate and administration.
12. An order is hereby issued, directing the Land Registrar, Nakuru to dispense with the production and/or surrender of the original title deed of parcel known as Kampi ya Moto Menengai Block 1/1731 in registration of mutation and transmission documents as per Certificate of Confirmation of Grant issued on 13th July, 2023.
13. This being a family matter I am constrained to order parties to bear their own costs.
It is so ordered.

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 2ND DAY OF MAY 2024

MOHOCHI S. M.

JUDGE

