



In re Estate of Mutunga Maara alias M'mutunga M'mara (Deceased) (Succession Cause 200 of 2012) [2024] KEHC 7577 (KLR) (20 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7577 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 200 OF 2012
EM MURIITHI, J
JUNE 20, 2024
IN THE MATTER OF THE ESTATE OF MUTUNGA
MAARA ALIAS M'MUTUNGA M'MARA (DECEASED)**

BETWEEN

EDWARD MARETE M'MUTUNGA PETITIONER

AND

HELLEN KANANA MBOROKI 1ST RESPONDENT

NEWTON KINYUA MARETE 2ND RESPONDENT

CECILIA KANYONI 3RD RESPONDENT

AND

MWITI MORRIS MUTUMA INTERESTED PARTY

SAMUEL MUTUMA M'MURITHI INTERESTED PARTY

RULING

1. By a Notice of Motion under certificate of urgency dated 18/12/2023, brought under Sections 41 (3) and 73 of the *Law of Succession Act*, Order 9 Rule 9 of the *Civil Procedure Rules*, Articles 50 and 159 (2) (a) of the *Constitution* 3A, 79G and 95 of the *Civil Procedure Act*, Article 159(2)(d) of the *Constitution* and all other enabling provisions of the law, the Applicant seeks:
 1. Spent
 2. That this Honorable Court be pleased to grant leave to the firm of M/s Kiautha Arithi & Co. Advocates to come on record in lieu of the firm of M/s Mukaria Muriungi & Co. Advocates.
 3. Spent



4. That this Honorable Court be pleased to order stay of execution of the Ruling/Order delivered on 26th June, 2023 and all consequential orders pending the hearing and determination of the intended suit in the Environment and Land Court.
5. That costs of this application be provided for.
2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of Samuel Mutuma M’Murithi, the Applicant herein sworn on even date. He contends that on 26/6/2023 this court delivered its ruling dismissing his application for joinder and review and/or setting aside of the ruling of 20/3/2018. He purchased Nyaki/Nkabune/1081 and 1082 for a consideration of Ksh. 1,750,000 and Ksh.800,000 respectively vide sale agreements dated 27/4/2016 and 7/6/2016. He took actual possession of the said parcels immediately after purchase and embarked on developing them by fencing, putting up a gate and building a house where he lives with his family members. He has never been served with any notice and/or court order to stop him from developing the suit properties and he has lived there peacefully with his family. He learnt about this cause from his friend Mwitii Morris Mutuma, the 1st Interested Party herein. He is an innocent purchaser of the suit properties for value without notice. The court ordered for cancellation of his title deeds over the suit properties without giving him an opportunity to defend himself. He is in the process of filing a suit before the Environment and Land Court at Meru to defend his title deeds over the suit properties, and he prays for stay of execution of the orders of 26/6/2023 pending the hearing and determination of the intended suit before the Environment and Land Court. He is apprehensive that the Administrator and the 1st Respondent intend to dispose of the suit properties to 3rd parties, which will render him destitute and expose him to untold suffering and loss. His right to a fair trial in judicial proceedings will not be achieved as provided under Article 50 (1) of the Constitution if the intended execution is allowed to proceed. He was previously represented by the firm of M/s Mukaria Muriungi & Co. Advocates but now he wishes to be represented by the firm of M/s Kiautha Arithi & Co. Advocates. The application has been brought without unreasonable delay and the court has discretionary powers to allow it.
3. The application has not been responded to.
4. The application was urged orally in court and a ruling reserved.

Determination

5. The issue for determination is whether the decision of 26/6/2023 ought to be stayed.
6. The test for applications for stay of execution is set out under Order 42 Rule 6 of the Civil Procedure Rules. The conditions that an Applicant has to meet and/or demonstrate for the court to grant stay of execution are as follows: -
 1. substantial loss will result to applicant if stay is not granted; and
 2. security is given by the Applicant for the due performance of any decree as may eventually become binding on the appellant upon determination of the appeal;
 3. and the application has been brought without unreasonable delay.
7. The Applicant moved the court vide an application dated 1/4/2022, seeking joinder, review of the ruling of 20/3/2018 and the maintenance of the status quo so that he could continue using, living on, occupying and enjoying L.R No. Nyaki/Nkabune/1081 and Nyaki/Nkabune/1083 where he has constructed his home until the hearing and determination of the cause. That application was dismissed



by the court vide the ruling of 26/6/2023. The court then proceeded to cancel the subdivision of L.R No. Nyaki/Nkabune/872 so that it could revert to the name of the deceased herein. That is the ruling the Applicant seeks to be stayed pending the hearing and determination of his intended suit in the Environment and Land Court.

8. The court finds that granting the stay sought would forestall the distribution of the estate to the rightful beneficiaries of the deceased herein at the expense of a purported purchaser, whose claim lies elsewhere.
9. This court finds that the Applicant has not demonstrated what substantial loss he will suffer if stay is denied. In fact, nothing bars him from lodging his intended case in the Environment and Land Court for appropriate reliefs.
10. The court does not find relevant the status of the cancellation of titles to this application for stay of execution. Stay cannot be granted, as properly submitted by Counsel for the respondent, so that the applicant can go and file another suit elsewhere.

Leave to come on record

11. The provisions of Order 9 Rule 9 of the *Civil Procedure Rules* make it mandatory that for any change of Advocates after judgment has been entered to be effected, there must be an order of the court upon application with notice to all parties or upon a consent filed between the outgoing advocate and the proposed incoming advocate. In order not to impede the Applicant's right to be represented by an Advocate of his choice, this court hereby grants the leave sought.

Orders

12. Accordingly, for the reasons set out above, this court makes the following orders:
 1. Leave is hereby granted to the firm of M/S Kiautha Arithi & Co. Advocates to come on record in lieu of the firm of M/S Mukaria Muriungi & Co. Advocates.
 2. The prayer for stay of execution of the Ruling/Order delivered on 26th June, 2023 and all consequential orders pending the hearing and determination of the intended suit in the Environment and Land Court, is hereby declined.
 3. There shall be no order as to costs.Order accordingly.

DATED AND DELIVERED ON THIS 20TH DAY OF JUNE 2024.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. K. Arithi for the Applicant.

Mr. K. Kiara for the Respondent.

