



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of M’Ibutu M’Imaita (Deceased) (Succession Cause  
2 of 2019) [2024] KEHC 7333 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7333 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 2 OF 2019  
TW CHERERE, J  
JUNE 13, 2024  
IN THE MATTER OF THE ESTATE OF M’IBUTU  
M’IMAITA(DECEASED)**

**BETWEEN**

**STEPHEN KIMONYE IBUTU ..... PETITIONER**

**AND**

**JAPHETH GUANTAI IBUTU ..... 1<sup>ST</sup> RESPONDENT**

**ISMAIL KABURU M’IBUTU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By a Certificate of Confirmation of Grant dated 23<sup>rd</sup> July, 2019, deceased’s estate in LR. Abothuguchi/Githongo/476 was distributed in equal shares to Japheth Guantai Ibutu, Stephen Kimonye Ibutu and Ismail Kaburu M’Ibutu.
2. Subsequently, the estate was subdivided equally into LR. Nos. Abothuguchi/Githongo/4639, 4640 and 4641 registered in the name of Japheth Guantai Ibutu, Ismail Kaburu M’Ibutu and Stephen Kimonye Ibutu respectively.
3. By an application dated 21<sup>st</sup> July,2020, Japheth Guantai Ibutu sought an order that the Stephen Kimonye Ibutu does vacate land parcel No. Abothuguchi/Githongo/4639 and occupy his land parcel No. Abothuguchi/Githongo/4641, and in default he be forcefully evicted.
4. By a ruling dated 15<sup>th</sup> October, 2021, Otieno J issued the following orders:
  1. I therefore find that the petitioner is in unlawful and tortious occupation of Abothuguchi/Githongo/4639



2. Being in such unlawful occupation, I direct that he moves out peacefully and gives vacant possession thereof to the registered owner within 60 days from today
3. For avoidance of doubt, if he shall not have vacated by the 16<sup>th</sup> December, 2021, he shall be forcefully evicted by a court bailiff in the presence of the area Officer Commanding the local police station who shall ensure that public order is maintained.
5. Subsequently by a ruling dated 21<sup>st</sup> December, 2022, this court declined the Applicant's application for stay of the orders dated 15<sup>th</sup> October, 2021 pending appeal on the ground that substantial loss had not been demonstrated.
6. I have considered the notice of motion dated 05<sup>th</sup> May, 2023 in which Applicant seeks to be allowed to continue occupying Abothuguchi/Githongo/4639 on the ground that he has made developments thereon in the light of oral evidence on record. I have also considered submissions filed on behalf of the Applicant and the 1<sup>st</sup> Respondent and previous court orders made in this Cause.
7. There is undisputed evidence that Applicant holds title to land parcel No. Abothuguchi/Githongo/4641 but in complete defiance of express court orders continues to occupy No. Abothuguchi/Githongo/4639 belonging to Japheth Guantai Ibutu.
8. Applicant has to date neither challenged the Certificate of Confirmation of Grant dated 23<sup>rd</sup> July, 2019 nor the ruling dated 15<sup>th</sup> October, 2021 in which the court directed that he vacates from No. Abothuguchi/Githongo/4639 or be forcibly evicted.
9. This application is yet another shot at the Applicant's attempt to circumvent court orders which this court will not countenance.
10. All litigation must, sooner than later, come to an end. The principle is founded in equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue. (See *Kenya Commercial Bank Limited v Benjob Amalgamated Limited* [2017] eKLR).
11. In the end, I find that the notice of motion dated 05<sup>th</sup> May, 2023 is unmerited and it is dismissed with costs to the 1<sup>st</sup> Respondent.

**DATED AT MERU THIS 13<sup>TH</sup> DAY OF JUNE 2024**

**WAMAE. T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Morris Kinoti

For Petitioner - Ms. Kirera for Mbichi Mboroki & Co. Advocates

For Respondents - Mr. Mutegi for Mutegi Mugambi & Co. Advocates

