



**In re Estate of Adriano Nthiga Thangari (Deceased) (Succession Cause
175 of 2015) [2024] KEHC 8913 (KLR) (24 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8913 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
SUCCESSION CAUSE 175 OF 2015
LM NJUGUNA, J
JULY 24, 2024**

IN THE MATTER OF THE ESTATE OF ADRIANO NTHIGA THANGARI (DECEASED)

BETWEEN

MICHAEL NJAGI NTHIGA APPLICANT

AND

SERINA WANJUKI RWAMBA RESPONDENT

RULING

1. The applicant has filed an ex parte chamber summons dated 04th January 2024 seeking the following orders:
 1. Spent;
 2. That the Honourable court be pleased to order the Land Registrar Embu County to cancel and/or void any subdivisions, transfer and/or sale of subsequent subdivisions of land parcel numbers [Particulars Withheld] and [Particulars Withheld];
 3. Costs of the application be provided for.
2. It is the applicant's case that following revocation of the grant through this court's ruling delivered on 04th October 2022, the land registrar has refused to cancel the subdivisions and transfers of the named properties until the cancellation is ordered by the court. That, for the orders of the court to be effective, it is necessary that the cancellations be ordered and the properties reverted to the names of the deceased to enable preservation of the estate. He stated that when the grant was revoked, the administrator had began the process of subdividing the land in a bid to distribute it to the beneficiaries, hence why he seeks the orders herein.
3. The application is opposed through an affidavit by the respondent, in which she deposed that the properties have already been subdivided and are in the hands of 3rd parties, therefore, the orders sought



are not relevant. That the 3rd parties involved should be given their day in court to defend their interests in the named properties. She deposed that this court lacks jurisdiction to order cancellation of titles under the Land Registration Act 2012. That the applicant has not produced search certificates of the titles that he seeks to be revoked, and, in any event, the application has been overtaken by events.

4. The court directed the parties to file written submissions but none of them complied.
5. The issue for determination herein is whether the orders sought should be granted.
6. Firstly, the respondent has challenged the jurisdiction of this court to order cancellation of titles. It is her argument that such an order may only be granted by the Environment and Land Court. The issue of cancellation of titles arises from this court's ruling revoking the grant that had been issued to the respondent. In this case, the High Court bears jurisdiction to order cancellation of titles since it is the only way to give effect to its judgment. Once the grant was revoked, it became necessary that the estate of the deceased be reconstituted as it was, before the respondent petitioned for the grant. Therefore, this court bears jurisdiction to determine the application herein since it arises within a succession cause. In the case of Santuzza Bilioti alias Mei Santuzza (Deceased) v Giancarlo Falasconi [2014] eKLR the court held:

“.....the succession court has powers to order a title deed to revert to the names of a deceased person. This in effect amounts to cancellation of the title deed. Further, a succession court can order a cancellation of a title deed if a deceased's property is being fraudulently taken away by no-beneficiaries such as where the property is being sold before a grant is confirmed.”

7. Having said that, it is the applicant's argument that the respondent, who was the administrator of the estate, had began the process of subdividing the land for purposes of distribution to the beneficiaries. The grant was revoked under section 76 of the Law of Succession Act, thus taking away the respondent's power to administer the estate. The respondent, on her part, argued that the land is currently being held by 3rd parties who should be accorded a chance to ventilate their case and hopefully secure their interests in the land. While her argument is sensible, the same ought to have been made during the proceedings for annulment of the grant and not now. She ought to have enjoined those parties at that stage for them to defend their interest. It is now too late in the day.
8. As it is, the applicant has moved the court seeking the orders herein. The application has been considered by the court on the strength of Rule 49 of the Probate and Administration Rules which provides: -

“A person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file a summons supported if necessary, by affidavit.”

9. Further, Section 47 of the Law of Succession Act and Rule 73 of the Probate & Administration Rules gives the High Court discretion to determine any matter before it in the interest of justice. (see also the cases of In re Estate of Simon Kiprop Cheruiyot (Deceased) [2021] eKLR and In Re Estate of the Late Kubuta Kamara Nguuro Alias Pharis Njegegu (Deceased) [2021] eKLR (*supra*)). In light of the foregoing, it is necessary that the orders sought be granted.
10. Therefore, having considered the pleadings and relevant laws herein, I find that the application has merit. Prayer (2) of the application is granted as prayed. There shall be no order as to costs.
11. It is so ordered.



DELIVERED, DATED AND SIGNED AT EMBU THIS 24TH DAY OF JULY, 2024.

L. NJUGUNA

JUDGE

..... for the Applicant

..... for the Respondent

