



In re Estate of Joseph Ibwa Mburi alias Joseph Ibwa (Deceased) (Miscellaneous Succession Cause 21 of 2019) [2024] KEHC 8700 (KLR) (18 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8700 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS SUCCESSION CAUSE 21 OF 2019**

LW GITARI, J

JULY 18, 2024

(FORMERLY P.M'S COURT SUCCESSION CAUSE NO. 5 OF 2007)

IN THE MATTER OF THE ESTATE OF JOSEPH IBWA MBURI ALIAS JOSEPH IBWA

IN THE MATTER OF

CELINA GAKUNYI KABURI APPLICANT

RULING

1. The matter pending before this court is the summons dated 8/8/2023 and filed in court on 21/9/2023 under Section 47 and Section 93 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules and Order 45 Civil Procedure Rules.
2. The summons is supported by the affidavit of the applicant Patrick Muriira Muketha sworn on 8/8/2023. He depones that on 4/7/2012 he bought land measuring 0.50 Acres from Dominic Njagi and entered a sale agreement. The said parcel was to be exercised from Land Parcel No. South.Tharaka/Tunyai A 1143. Again on 8/2/2019 he bought 0.25 Acres from Celina Gakunyu Kaburi which was to be exercised from Land Parcel No.S.Tharaka/Tunyai 'A' 3449 and they entered a land sale agreement. The two sellers were beneficiaries of the deceased herein and their entitlements to the estate was determined in Succession Cause No.5/2007 which bequeathe Land Parcel No.S. Tharaka/Tunyai/'A' 1143 to Dominic Njagi. The two sellers then caused Land Parcel No.S.Tharaka/Tunyai/'A' 1143 to be sub-divided into Parcels No.'A' 3449 and he got portions registered in his name, that is Tharaka/Tunyai/'A' 3448 and 4431 which he took possession and developed them extensively. The applicant contends that he is a bonafide purchaser for value and that at the time he bought the properties, there existed a valid certificate of confiration of grant which had conferred interests on the person from whom he bought the land without notice that there were other persons with a claim or right over the properties. The applicant depones that there was concealment of material fcts from the court leading to the issuance of the impugned order. He prays that the order issued on 24/6/2019 be reviewed and set aside so that he can retain the two titles.



Background:

3. This matter relates to the estate of Joseph Ibwa Mburi alias Joseph Ibwa (deceased) who died intestate on 14/9/2023. A grant of letters of administration was issued to Celina Gakunyi on 7/11/2007 in the Principal Magistrate's Court at Chuka Succession Cause No.5/2007. The grant was later confirmed on 11/3/2009 and the estate of the deceased was distributed as follows:-

1. Joseph Kinyua Njagi -Tharaka/Tunyai/'A'1635 -2.00 Acres
Celina Gakunyi Kaburi- Balance from Land Parcel No. Tunyai/'A' 1635.
2. Land Parcel No.Tharaka/Tunyai/'A' 1140
Stephene Mungai Gakumo

Silas Mutwiri Rwamba } 1.00 Acre Each
Lucy Gatumi Kamwara }

3. Domenic Njagi Joseph - Tharaka/Tunyai 'A'1143- Whole
The grant was confirmed on 11/3/2009.

4. A miscellaneous Succession Cause No.21/2019 was filed in this court on 6/6/2019 by Judy Mbura seeking order of inhibition on the properties which were distributed under the said grant and a revocation of the grant. The said grant was revoked vide an order of this court issued on 24th June 2019 and all orders issued pursuant to the said grant were reversed. A fresh grant was also issued to Celina Gakunyi Kaburi Gakunyi. She filed a summons for confirmation of grant which has not been heard and determined. I have considered the application. There is a summons which is dated 14/3/2023 which has not been heard and determined. The summons was filed by Judy Mbura Joseph who is seeking to be appointed as the administratrix in place of Celina Gakunyi Kaburi the administratrix who is now deceased. The court has discretion to appoint an administrator as provided under Section 66 of the Law of Succession Act. It is the duty of a personal representative to enforce by suit or otherwise all causes of action that may arise out of the death of the deceased. Section 82(a) of the Law of Succession Act provides:-

“Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers:-

- a. To enforce by suit or otherwise, all causes of action which by virtue of any law survive the deceased or arise out of his death for his estate.”

5. I find this being a Succession Cause which involves the estate of a deceased cannot proceed in the absence of an administrator appointed by this court. The determination of the pending summons shall be stayed pending the appointment of an administrator or administratrix.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 18TH DAY OF JULY 2024.

L.W. GITARI

JUDGE

