



REPUBLIC OF KENYA



**In re Estate of Karanja Kago (Deceased) (Succession Cause 2361 of 2014)
[2024] KEHC 8603 (KLR) (Family) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8603 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2361 OF 2014
HK CHEMITEI, J
JULY 11, 2024
IN THE MATTER OF THE ESTATE OF KARANJA KAGO (DECEASED)**

BETWEEN

MARY WANJIKU KARANJA PETITIONER

AND

GEORGE KAGO KARANJA 1ST OBJECTOR

DUNCAN MWEIBA 2ND OBJECTOR

AND

CHARLES KIHAGI THUAH CAVEATOR

OMEGA COMMERCIAL SERVICES LTD CAVEATOR

RULING

1. There are two sets of applications herein. The first application dated 1st December, 2023 filed by the applicant, Joseph Karanja Wamugi is seeking for orders that:
 - a. Spent.
 - b. Pending inter partes hearing of this application this honourable court be and is hereby pleased to grant an order of preservation to preserve the properties known as:
 - I. L.R No. 9363/304 (original No. 9353/ 65/ 2).
 - II. L.R No. 9363/305 (original No. 9353/65/3).
 - III. L.R. No. 9363/ 306 (original No. 9353/65/4).



- IV. L.R No. 9363/ 307 (original No. 9353/ 65/ 5).
- V. L.R No. 9363/ 308 (original No. 9353/ 65/ 6).
- VI. L.R No. 9363/ 309 (original No. 9353/ 65/ 7).
- VII. L.R No. 9363/ 310 (original No. 9353/ 65/ 8).
- VIII. L.R No. 9363/ 311 (original No. 9353/ 65/ 9).
- IX. L.R No. 9363/ 312 (original No. 9353/ 65/ 10).
- X. L.R No. 9363/ 313 (original No. 9353/ 65/ 11).
- XI. L.R No. 9363/ 314 (original No. 9353/ 65/ 12).
- XII. L.R No. 9363/ 315 (original No. 9353/ 65/ 13).
- XIII. L.R No. 9363/ 316 (original No. 9353/ 65/ 14).
- XIV. L.R No. 9363/ 317 (original No. 9353/ 65/ 15).
- XV. L.R No. 9363/ 318 (original No. 9353/ 65/ 16).
- XVI. L.R No. 9363/ 319 (original No. 9353/ 65/ 17).
- XVII. L.R No. 9363/ 320 (original No. 9353/ 65/ 18).
- XVIII. L.R No. 9363/ 321 (original No. 9353/ 65/ 19).
- XIX. L.R No. 9363/ 322 (original No. 9353/ 65/ 20).
- XX. L.R No. 9363/ 323 (original No. 9353/ 65/ 21).
- XXI. L.R No. 9363/ 324 (original No. 9353/ 65/ 22).
- XXII. L.R No. 9363/ 325 (original No. 9353/ 65/ 23).
- XXIII. L.R No. 9363/ 326 (original No. 9353/ 65/ 24).
- XXIV. L.R. No. 9363/ 327 (original No. 9353/ 65/ 25).

c. Pending inter – parties hearing of this application this honourable court be and is hereby pleased to grant an order of inhibition inhibiting registration of any instrument and/ or dealing in respect of the properties known as:

- I. L.R No. 9363/ 304 (original No. 9353/ 65/ 2).
- II. L.R No. 9363/ 305 (original No. 9353/ 65/ 3).
- III. L.R No. 9363/ 306 (original No. 9353/ 65/ 4).
- IV. L.R No. 9363/ 307 (original No. 9353/ 65/ 5).
- V. L.R No. 9363/ 308 (original No. 9353/ 65/ 6).
- VI. L.R No. 9363/ 309 (original No. 9353/ 65/ 7).
- VII. L.R No. 9363/ 310 (original No. 9353/ 65/ 8).
- VIII. L.R No. 9363/ 311 (original No. 9353/ 65/ 9).



- IX. L.R No. 9363/312 (original No. 9353/65/ 10).
 - X. L.R No. 9363/313 (original No. 9353/65/ 11).
 - XI. L.R No. 9363/314 (original No. 9353/65/ 12).
 - XII. L.R No. 9363/315 (original No. 9353/65/ 13).
 - XIII. L.R No. 9363/316 (original No. 9353/65/ 14).
 - XIV. L.R No. 9363/317 (original No. 9353/65/ 15).
 - XV. L.R No. 9363/318 (original No. 9353/65/ 16).
 - XVI. L.R No. 9363/319 (original No. 9353/65/ 17).
 - XVII. L.R No. 9363/320 (original No. 9353/65/ 18).
 - XVIII. L.R No. 9363/321 (original No. 9353/65/ 19).
 - XIX. L.R No. 9363/322 (original No. 9353/65/20).
 - XX. L.R No. 9363/323 (original No. 9353/65/21).
 - XXI. L.R No. 9363/324 (original No. 9353/65/ 22).
 - XXII. L.R No. 9363/325 (original No. 9353/65/ 23).
 - XXIII. L.R No. 9363/326 (original No. 9353/65/ 24).
 - XXIV. L.R No. 9363/327 (original No. 9353/65/ 25).
- d. Pending inter-parties hearing of this application, this honourable court be and is hereby pleased to order and direct the petitioner to produce before this honourable court for scrutiny and safe – keeping the original certificate of confirmation of grant dated 5th February, 2018, purportedly issued by this honourable court and signed by Honourable Justice William Musyoka within 7 days or such other reasonable period that this honourable court may deem fit to grant.
- e. Pending hearing and determination of this suit this honourable court be and is hereby pleased to grant an order of preservation to preserve the properties known as:
- I. L.R No. 9363/ 304 (original No. 9353/ 65/ 2).
 - II. L.R No. 9363/ 305 (original No. 9353/ 65/ 3).
 - III. L.R No. 9363/ 306 (original No. 9353/ 65/ 4).
 - IV. L.R No. 9363/ 307 (original No. 9353/ 65/ 5).
 - V. L.R No. 9363/ 308 (original No. 9353/ 65/ 6).
 - VI. L.R No. 9363/ 309 (original No. 9353/ 65/ 7).
 - VII. L.R No. 9363/ 310 (original No. 9353/ 65/ 8).
 - VIII. L.R No. 9363/ 311 (original No. 9353/65/ 9).
 - IX. L.R No. 9363/312 (original No. 9353/65/ 10).
 - X. L.R No. 9363/313 (original No. 9353/65/ 11).



- XI. L.R No. 9363/314 (original No. 9353/65/ 12).
- XII. L.R No. 9363/315 (original No. 9353/65/ 13).
- XIII. L.R No. 9363/316 (original No. 9353/65/ 14).
- XIV. L.R No. 9363/317 (original No. 9353/65/ 15).
- XV. L.R No. 9363/318 (original No. 9353/65/ 16).
- XVI. L.R No. 9363/319 (original No. 9353/65/17).
- XVII. L.R No. 9363/320 (original No. 9353/65/ 18).
- XVIII. L.R No. 9363/321 (original No. 9353/65/ 19).
- XIX. L.R No. 9363/322 (original No. 9353/65/ 20).
- XX. L.R No. 9363/323 (original No. 9353/65/ 21).
- XXI. L.R No. 9363/324 (original No. 9353/65/ 22).
- XXII. L.R No. 9363/325 (original No. 9353/65/ 23).
- XXIII. L.R No. 9363/326 (original No. 9353/65/ 24).
- XXIV. L.R No. 9363/327 (original No. 9353/65/ 25).

f. Pending hearing and determination of this suit, this honourable court be and is hereby pleased to grant an order of inhibition inhibiting registration of any instrument and/ or dealing in respect of the properties known as:

- I. L.R No. 9363/ 304 (original No. 9353/ 65/ 2).
- II. L.R No. 9363/ 305 (original No. 9353/ 65/ 3).
- III. L.R No. 9363/ 306 (original No. 9353/ 65/ 4).
- IV. L.R No. 9363/ 307 (original No. 9353/ 65/ 5).
- V. L.R No. 9363/ 308 (original No. 9353/ 65/ 6).
- VI. L.R No. 9363/ 309 (original No. 9353/ 65/ 7).
- VII. L.R No. 9363/ 310 (original No. 9353/ 65/ 8).
- VIII. L.R No. 9363/ 311 (original No. 9353/ 65/ 9).
- IX. L.R No. 9363/312 (original No. 9353/65/ 10).
- X. L.R No. 9363/ 313 (original No. 9353/ 65/ 11).
- XI. L.R No. 9363/314 (original No. 9353/65/ 12).
- XII. L.R No. 9363/315 (original No. 9353/65/ 13).
- XIII. L.R No. 9363/316 (original No. 9353/65/ 14).
- XIV. L.R No. 9363/317 (original No. 9353/65/ 15).
- XV. L.R No. 9363/318 (original No. 9353/65/ 16).



- XVI. L.R No. 9363/319 (original No. 9353/65/ 17).
- XVII. L.R No. 9363/320 (original No. 9353/65/ 18).
- XVIII. L.R No. 9363/321 (original No. 9353/65/ 19).
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- XXII. L.R No. 9363/325 (original No. 9353/65/ 23).
- XXIII. L.R No. 9363/326 (original No. 9353/65/ 24).
- XXIV. L.R No. 9363/327 (original No. 9353/65/ 25).

g. This honourable court be and is hereby pleased to order and direct the petitioner herein to produce before this honourable court for scrutiny and safe – keeping the original copy of the certificate of confirmation of grant dated 5th February, 2018, together with proof of payment for the same to the judiciary, purportedly issued by this honourable court and purportedly signed by Honourable Justice William Musyoka within 7 days or such other reasonable period that this honourable court may deem fit to grant.

h. Pending the hearing and determination of this suit, this honourable court be and is hereby pleased to order and direct the petitioner to deposit within 7 days or such other reasonable period that this honourable court may deem fit to grant, the original certificates of title in respect of the properties known as:

- I. L.R No. 9363/ 304 (original No. 9353/ 65/ 2).
- II. L.R No. 9363/ 305 (original No. 9353/ 65/ 3).
- III. L.R No. 9363/ 306 (original No. 9353/ 65/ 4).
- IV. L.R No. 9363/ 307 (original No. 9353/ 65/ 5).
- V. L.R No. 9363/ 308 (original No. 9353/ 65/ 6).
- VI. L.R No. 9363/ 309 (original No. 9353/ 65/ 7).
- VII. L.R No. 9363/ 310 (original No. 9353/ 65/ 8).
- VIII. L.R No. 9363/ 311 (original No. 9353/ 65/ 9).
- IX. L.R No. 9363/312 (original No. 9353/65/ 10).
- X. L.R No. 9363/ 313 (original No. 9353/65/ 11).
- XI. L.R No. 9363/314 (original No. 9353/65/ 12).
- XII. L.R No. 9363/315 (original No. 9353/65/ 13).
- XIII. L.R No. 9363/316 (original No. 9353/65/ 14).
- XIV. L.R No. 9363/317 (original No. 9353/65/ 15).
- XV. L.R No. 9363/318 (original No. 9353/65/ 16).



XVI. L.R No. 9363/319 (original No. 9353/65/ 17).

XVII. L.R No. 9363/320 (original No. 9353/65/ 18).

XVIII. L.R No. 9363/321 (original No. 9353/65/ 19).

XIX. L.R No. 9363/322 (original No. 9353/65/ 20).

XX. L.R No. 9363/323 (original No. 9353/65/ 21).

XXI. L.R No. 9363/ 324 (original No. 9353/65/ 22).

XXII. L.R No. 9363/325 (original No. 9353/65/ 23).

XXIII. L.R No. 9363/326 (original No. 9353/65/ 24).

XXIV. L.R No. 9363/327 (original No. 9353/65/ 25).

- i. Upon issuance of any orders by this honourable court, the 2nd caveator/ applicant be and is hereby granted leave to serv the resultant orders by way of advertisement in two daily newspapers enjoying wide circulation in Kenya.
 - j. Costs of this application be personally borne by the petitioner/ respondent.
2. The application is supported by affidavit sworn by Joseph Karanja Wamugi on 1st September, 2023. He avers, inter alia that he is the director of Omega Commercial Services Ltd, the 2nd caveator and applicant herein, with the board of directors' authority to swear this affidavit. The main asset (s) that form the deceased's estate is L. R. No. 9363/ 65 (I. R. 72006) measuring approximately 25 acres (hereinafter, "the suit property"). The applicant had purchased 4 acres from the deceased which was to be excised out of L. R. No. 9363/ 65 (I. R. 72006).
 3. He claimed that he purchased the same from the deceased and the administrator has deliberately refused to recognize them and has attempted to kick them out of the said land.
 4. The application is opposed vide notice of preliminary objection dated 10th January, 2024 and replying and further affidavits sworn by Mary Wanjiku Karanja on 10th January, 2024 and 21st February, 2024 respectively.
 5. The notice of preliminary objection is based on the grounds that:
 - (a) Section 76 of the Law of Succession Act Cap 160 provides for the procedure for annulment and revocation of grant.
 - (b) The subject matter in this suit is involved in an active Civil Appeal Case No. E584 of 2022 Court of Appeal Nairobi that is pending hearing and determination and where the Court has issued stay of execution orders touching on the same subject matter.
 - (c) Pursuant to section 107 of the evidence Act the burden of proof lies on he who asserts the existence of a fact, whoever desires the court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove those facts exist.
 - (d) There is a judgment/ ruling pending to be delivered on notice before Lady Justice Maureen Odero for an application of stay of proceedings of this honourable court pending hearing and determination of Civil Appeal No. E584 of 2022.
 - (e) The applicant is in contempt for multiplicity of suits for filing similar applications raising the same issues in the same court.



6. The second application is by Mary Wanjiku Karanja and is dated 24th April 2023 and seeks the following orders;
 - (a) That this court be pleased to stay proceedings regarding land parcel number LR No 9363 /65 pending the hearing and determination of Nairobi Court of Appeal no E584 of 2022 *Mary Wanjiru Karanja v. Michael Ndichu Wangaruro t/a Ndichu & associates and 4 others* which is the subject of the appeal.
 - (b) That this court be pleased to stay further proceedings regarding parcel number LR 9363/65 which is pending the hearing and determination of the Court of Appeal in Nairobi court of appeal number E584 of 2022.
7. The application is supported by the sworn affidavit of Joseph Kiarie Njenga her advocate.
8. The gist if this application is that the parties went to the Environment and Land court which gave some unfavorable orders regarding the aforementioned parcel of land. They then filed an appeal and the Court of Appeal granted some stay orders pending the hearing of the said appeal.
9. The court has perused this file which is now a decade old. The pleadings herein are full of interim applications some which have not been settled. The court has also perused the above rival affidavits, the annexures and the submissions. In my humble view should the court continue to concentrate on the applications then it will not make any meaningful progress but shall fall into the machinations of the parties whom I find are hell- bent to delay this matter.
10. My sister Justice Odero for instance on 11th March 2022 made the following directives;

“ Accordingly I do allow the application and make the following orders;

 - i. The directions/orders made on 17th December 2019 to the effect that the protest to the summons for confirmation of grant be determined by way of written submissions are hereby set aside.
 - ii. The protests will be determined by way of viva voce evidence through a hearing in open court at which all parties shall be at liberty to call witnesses.
 - iii. A hearing will be allocated on priority basis.”
11. What followed thereafter were series of applications resulting in this matter not being heard for almost three years.
12. I think this is a matter the court must stamp its feet. The estate cannot be litigated piecemeal and in a manner that defeats the cause of justice. All the parties in my view must carry blame whether they came late in the day in delaying this matter.
13. I note that there is a serious dispute on whether Musyoka J indeed confirmed the grant which the applicant /administrator used in carrying out the survey of the original parcel namely LR NO 9363/65 which resulted into various titles. That is a matter which must be determined by way of oral evidence.
14. Needless to state that it is imperative that the said grant issued by Musyoka J on 5th February 2018 if indeed it is true ought to be stayed pending the determination of this course. This shall go a long way in reassuring the objectors/caveators and allaying their fears. The administrator has nothing to lose in any case.



15. From the evidence on record it appears that there are many unanswered issues and that is why the application for the preservation of the titles as at the filing of the applications remains necessary to all the parties herein.
16. I have read the decision by the Court of Appeal. I do not find any contradiction with the orders sought for the preservation of the parcels of land in contention. As a matter of fact, it appears to me that what the applicant presented to the said court was the main title namely LR NO 9363/65 without disclosing that the same had been extinguished by the resultant titles.
17. If that is the case, then it defeats her argument that the said parcel has been divided and there are several resultant titles which i think are the ones the applicants are seeking to have them preserved. Respectfully therefore and not wishing to countermand the Court of Appeal orders I find that the preservation of the said title whether in the original form as directed by the said court or the numerous titles as indicated in the above application shall be to the interest of all the parties, beneficiaries and the alleged purchasers as well.
18. In the premises I find that the best way is to go for the main trial. While at it the titles must be preserved. I must add that so as to forestall any other applications it shall be necessary that any party seeking a new application must first seek the leave of this court.
 17. I direct and order as follows:
 - (a) Pending hearing and determination of this cause an order is hereby issued to preserve the undermentioned titles and that no sale, charge ,transfer or registration of any instrument and/or dealing in other way by any of the parties herein or other third parties, namely:
 - (1) L.R. No. 9363/ 304 (original No. 9353/ 65/ 2).
 - (2) L.R. No. 9363/ 305 (original No. 9353/ 65/ 3).
 - (3) L.R. No. 9363/ 306 (original No. 9353/ 65/ 4).
 - (4) L.R. No. 9363/ 307 (original No. 9353/ 65/ 5).
 - (5) L.R. No. 9363/ 308 (original No. 9353/ 65/ 6).
 - (6) L.R. No. 9363/ 309 (original No. 9353/ 65/ 7).
 - (7) L.R. No. 9363/ 310 (original No. 9353/ 65/ 8).
 - (8) L.R. No. 9363/ 311 (original No. 9353/ 65/ 9).
 - (9) L.R. No. 9363/ 312 (original No. 9353/ 65/ 10).
 - (10) L.R. No. 9363/ 313 (original No. 9353/ 65/ 11).
 - (11) L.R. No. 9363/ 314 (original No. 9353/ 65/ 12).
 - (12) L.R. No. 9363/ 315 (original No. 9353/ 65/ 13).
 - (13) L.R. No. 9363/ 316 (original No. 9353/ 65/ 14).
 - (14) L.R. No. 9363/ 317 (original No. 9353/ 65/ 15).
 - (15) L.R. No. 9363/ 318 (original No. 9353/ 65/ 16).
 - (16) L.R. No. 9363/ 319 (original No. 9353/ 65/ 17).



- (17) L.R. No. 9363/ 320 (original No. 9353/ 65/ 18).
 - (18) L.R. No. 9363/ 321 (original No. 9353/ 65/ 19).
 - (19) L.R. No. 9363/ 322 (original No. 9353/ 65/ 20).
 - (20) L.R. No. 9363/ 323 (original No. 9353/ 65/ 21).
 - (21) L.R. No. 9363/ 324 (original No. 9353/ 65/ 22).
 - (22) L.R. No. 9363/ 325 (original No. 9353/ 65/ 23).
 - (23) L.R. No. 9363/ 326 (original No. 9353/ 65/ 24).
 - (24) L.R. No. 9363/ 327 (original No. 9353/ 65/ 25).
- (b) No new application shall be filed by any party in this cause without first obtaining the leave of this court.
 - (c) There be stay of use in any way of the contested grant issued by Musyoka J dated 5th February 2018 and the original grant shall be returned by the administrator to the Deputy Registrar of this court for safe keeping within seven (7) days from the date herein.
 - (d) The parties are hereby granted 30 days each to file and exchange if necessary any further affidavits, statements or documents to be relied on during the hearing.
 - (e) This matter be set down for hearing forthwith.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 11TH DAY OF JULY 2024.

H K CHEMITEI

JUDGE.

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