



In re Estate of Francis Mungai Njiraini (Deceased) (Miscellaneous Succession Cause E181 of 2022) [2024] KEHC 11779 (KLR) (Family) (20 September 2024) (Ruling)

Neutral citation: [2024] KEHC 11779 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS SUCCESSION CAUSE E181 OF 2022
PM NYAUNDI, J
SEPTEMBER 20, 2024
IN THE MATTER OF THE ESTATE OF FRANCIS MUNGAI NJIRAINI (DECEASED)

RULING

1. There are two applications subject of this ruling. The first is the Notice of Motion dated 20th July 2022, in which the Applicant Alice Wanjiku Murima seeks that warrant of arrest issued on 3rd October 2012 be enforced. The 2nd is Notice of Motion dated 26th June 2024 filed by the Administrator seeking lifting of restriction placed against title of parcel No. Loc T.1 Thuita/5 by the Respondent.
2. The Court directed that parties file their written submissions. Parties have complied except for the Applicant in Application dated 20th July 2022.
3. The Applicant in Application dated 20th July 2022 does not indicate the provisions of the law under which the Application is presented. It is presented presumably to enforce orders that were issued in Succession Cause No. 932 of 2012. This Application is a template of an incurably defective application. The record shows that the Applicant in Succession Cause 932 of 2012, Jacinta Lucy Waithira, withdrew it on 16th September 2013 and subsequently file was closed. That file having been closed, the active file in relation to the estate of the deceased herein is Thika Chief Magistrate's Court Succession Cause No. 45 of 2004 in which Grant of Letters of Administration Issued to Henry Mungai.
4. The Applicant has not stated with required clarity what it is they are asking the Court to do. I am unable to discern any enforceable orders that the Court can issue. Further the Application is presented by Francis Mungai whose interest in the estate is not defined. Although he has a Power of Attorney, this does not entitle him to present the Application in his own name as he does not have the requisite locus.
5. The Application as presented is incurably defective and incompetent, it does not cite the provisions of the law under which it is presented, it is accordingly struck out.



6. With regard to the application dated 26th June 2024, the Applicant seeks removal of restriction lodged on 3rd May 2024 that states “Restriction No dealings until determination of Succession which was transferred to Milimani as HCF. Misc. No. 181 of 2021 *Francis Mungai vs Henry Ndungu*”
7. The Respondent has lodged a Preliminary Objection in relation to this Application and contends that the matter was resolved in his favour in ruling delivered on 6th June 2023 in the Thika Succession Cause. It is his contention that the restriction can only be lifted after the determination of the succession cause.
8. Sections 76, 77 and 78 of the [Land Registration Act](#) (Act No. 3 of 2012) sets out the procedure for the placement, notification, removal and variation of restrictions.
9. Section 78 would be of particular interest here. It reads: -
 78.
 - (1) The Registrar may, at anytime and on application by any person interested or at the Registrar’s own motion, and after giving the parties affected by the restriction an opportunity of being heard, order that the removal or variation of a restriction.
 - (2) Upon the application of a proprietor affected by a restriction, and upon notice to the Registrar, the court may order a restriction to be removed, varied, or other order as it deems fit, and may make an order as to costs.
10. A party affected by a Restriction would either apply for its removal to the Registrar under subsection (1) or to the Court under Subsection (2).
11. The Applicants have resorted to Court through the summons before me. The Respondent contends that the restriction was lodged to protect her interest.
12. The Certificate of confirmation of Grant issued on the strength of which the parcel was transmitted to the Applicant and a title issued to the Applicant. There is no matter that is transferred to the High Court for determination as the lower court has already confirmed the Grant. There is no evidence that the transmission does not comply with the Certificate of Confirmation of Grant. I have had opportunity to read the ruling of 6th June 2023 by Hon S. Atambo, the ruling does not in any way vary the certificate of Confirmation of Grant issued on 8th November 2017. In the circumstances order as follows: -
 1. That the Notice of Motion dated 20th July 2022 is struck out.
 2. That the Application dated 26th June 2024 is allowed; the restriction lodged on 3rd May 2024 on all that property comprised in Loc. 1/ Thuita/ 5 be lifted vacated and or removed.
 3. Original Court case file in Thika Magistrate’s Court Succession Cause No. 45 of 2004 to be returned to that Court.
 4. This being a family matter each party will bear their own costs

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 20TH DAY OF SEPTEMBER, 2024.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of



