



REPUBLIC OF KENYA



In re Estate of M'Ikiugu M'Mukindia (Deceased) (Succession Cause 485 of 2004) [2024] KEHC 11099 (KLR) (19 September 2024) (Ruling)

Neutral citation: [2024] KEHC 11099 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 485 OF 2004
EM MURIITHI, J
SEPTEMBER 19, 2024**

BETWEEN

STANLEY NDEREBA M'IKIUGU PETITIONER

AND

GEOFFREY RIUNGU OBJECTOR

RULING

1. By summons under certificate of urgency dated 18/9/2023 brought under Rules 49 & 73 of the [Probate and Administration Rules](#), the applicant seeks that:
 1. This Honourable Court be pleased to order for dispensation of the original titles of the parcels No. Abothuguchi/Katheri/382 and Abothuguchi/Katheri/202 for ease of transmission to the beneficiaries herein.
 2. This Honourable Court do hereby appoint the applicant as the administrator of the estate of the late M'Ikiugu M'Mukindia to execute the certificate of confirmation of grant issued on 9th September, 2019.
 3. In the alternative, that this Honorable Court authorize the deputy registrar to sign and/or execute the requisite transmission documents as per the certificate of confirmation of grant issued on 19th September, 2019.
 4. The Costs of this application be provided for.
2. The application is premised on the grounds on the face of it and the supporting affidavit of Geoffrey Riungu, the applicant herein sworn on even date. He avers that since the certificate of confirmation of grant was issued on 19/9/2019, the beneficiaries have been unable to execute and distribute the properties on the basis that the administrator passed on. Given the animosity between the surviving beneficiaries, the execution of the said grant has been deemed impossible due to the various applications



done herein. Since the grant was issued, the other beneficiaries have been enjoying and benefitting from the estate at his expense. The land was duly surveyed and subdivided but transmission has proven to be difficult due to the death of the administrator, and he urges the court to appoint him as an administrator so that he can promptly complete the transmission process. He is amenable to the Deputy Registrar being authorized to execute the transmission documents in case the other beneficiaries oppose his appointment as an administrator. Unless the orders sought herein are granted, the estate shall continue being wasted to the detriment of the beneficiaries.

3. The petitioner/respondent opposed the application by his replying affidavit sworn on 2/7/2024. He avers that if transmission of the estate is done, he stands to suffer since his meritorious appeal is still pending before the Court of Appeal. All the beneficiaries are enjoying the estate and there has been no acrimony as each is utilizing his portion of the estate. He urged that it is in the interest of justice that this application is dismissed, as no prejudice will be occasioned if they await the outcome of the appeal.

Determination

4. The sole issue for determination is whether the application is merited.
5. Before delving into the merits of the application, the court wishes to disclose that the averment by the applicant that the estate has no administrator subsequent to the death of the initial administrator Justus Kairigo M'Ikiugu, is not entirely accurate. This court (F.Gikonyo J.) on 7/12/2015 upon hearing an application dated 22/9/2015 seeking to substitute the deceased administrator ordered that:

“Stanley Ndereba Kiugu is appointed as joint administrator herein.”

6. On the merits of the application, the applicant faults the respondent, now the administrator of the estate of deliberately failing to execute the transmission documents to effect the requisite transfers to the beneficiaries.
7. In rejoinder, the respondent urges that the status quo herein ought to be maintained pending the conclusion of his meritorious appeal before the Court of Appeal. Furthermore, there is no acrimony as each beneficiary is occupying and utilizing his share of the estate.
8. The court finds that the respondent's blatant refusal to execute the transmission documents owing to the pendency of his appeal in the Court of Appeal, is an obstruction of justice. While he has exhibited a Notice of Appeal dated 5/6/2020, it is provided under Order 42 Rule 6 (1) of the [Civil Procedure Rules](#) that -

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.”



9. The mere lodging of a Notice of Appeal is not in itself an automatic stay of execution of the judgment of this court. Needless to state, this court (A. Mabeya J.) by its ruling of 10/12/2020 emphatically dismissed an application for stay of execution dated 27/10/2020 in rendering thus:

“As it stands, the petitioner has no right to appeal against the judgment of 24/7/2019 (Sitati J). He seeks to hang on his intention to appeal against the ruling of 28/5/2020 to be granted a stay of the said judgment. I have considered his prayer for stay of execution. Firstly, the application was brought a month after the delivery of the ruling of 28/5/2020. No justifiable reasons were given for the delay in bringing the application. Secondly, the petitioner did not show the alleged steps the respondent had taken to transfer the suit properties to his detriment as alleged. I think this Court having declined to grant the petitioner leave to appeal, the Court became functus officio as regards the judgment of 24/7/2019. It can only deal with proceedings emanating from its ruling of 28/5/2020, which is not the case with the present application. What the petitioner should have done, while he has properly appealed against the order refusing him leave to appeal, was to apply to the Court of Appeal for the stay orders he is now seeking before this Court. Being of the foregoing view, I find the application to be without merit and dismiss the same.”

10. An application for review and setting aside of the judgment in this case was declined by the ruling of this court of 28/3/2023, pointing out that the Court now seized of the matter is the Court of Appeal.
11. In the present application, the applicant seeks mere facilitative orders to implement the judgment, which is independent of his allegedly pending appeal before the Court of Appeal. There being no orders of stay against such implementation, the application is warranted.

Orders

12. Accordingly, for the reasons set out above and in the interest of justice, this court finds merit in the Objector's application dated 18/9/2023 and it is granted in terms of prayers 1 and 3 thereof.
13. There shall be no order as to costs.

Order accordingly.

DATED AND DELIVERED THIS 19TH DAY OF SEPTEMBER, 2024.

EDWARD M. MURIITHI

JUDGE

APPEARANCES

Ms. Kiome for the Applicant.

Mrs. Mutegi for the Respondent.

