



REPUBLIC OF KENYA



In re Estate of Perminus M'mugambi Mugambi (Deceased) (Succession Cause 213 of 1997) [2024] KEHC 10990 (KLR) (19 September 2024) (Ruling)

Neutral citation: [2024] KEHC 10990 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 213 OF 1997
EM MURIITHI, J
SEPTEMBER 19, 2024**

IN THE MATTER OF THE ESTATE OF PERMINUS M'MUGAMBI MUGAMBI (DECEASED)

BETWEEN

CAROLINE GACHERI MURERWA APPLICANT

AND

TABITHA MWARI ITWARUCHIU 1ST RESPONDENT

LYDIA KURI MURERWA 2ND RESPONDENT

FLORENCE KINAITORE IMATHIU 3RD RESPONDENT

RULING

1. By summons under certificate of urgency dated 11/1/2024 brought under Section 47 of the [Law of Succession Act](#), Rules 49 and 73 of the [Probate and Administration Rules](#), Rule 3 of the [High Court \(Practice and Procedure\) Rules](#) and all other enabling provisions of the law, Applicant seeks that:
 1. Spent
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 3. The 1st Respondent, Tabitha Mwari Itwaruchiu be ordered to execute all the necessary documents for the sale and transfer of Plot No. Meru Municipality Kirukuri Block 11/149 to the Purchaser, Stephen Ndungu Ngeera, within three (3) days, in default, the Deputy Registrar of this Court do execute the said documents in place of Tabitha Mwari Itwaruchiu, the 1st Respondent herein.
 4. The 1st Respondent herein be ordered to supply the Applicant with copies of her National ID, KRA PIN and 3 passport photographs to facilitate the registration of the transfer.



5. 1st Respondent be ordered to supply the Applicant with her bank account details forthwith, and in default, the applicant do deposit her share of the funds from the proceeds of sale into court and/or to her Advocate on record, as this Honourable Court shall deem fit.
6. The 1st Respondent do bear the costs of this application.
2. In her affidavit in support of the application, the Applicant avers that she is a beneficiary and/or a beneficial owner of Plot No. Meru Municipality Block 11/49 (undeveloped) measuring 0.0503 Ha registered in the name of Lydia Kuri Ibiiri as a trustee. This court issued orders directing and approving the sale of the subject plot to Dr. Stephen Ndungu Ngera at Kshs 40,000,000 and the net proceeds of the sale to be shared between her, Eric Muguna Murerwa and the 1st Respondent. Subsequently, the 1st Respondent has refused to cooperate to implement the court order by completing the sale, despite several requests and reminders. The 1st Respondent has failed to furnish not only her bank account details for purposes receiving her share of the proceeds of sale, but also copies of her ID card, KRA PIN, passport size photographs to facilitate registration of the transfer. Consequent to the 1st Respondent's blatant refusal to execute the necessary documents to complete the sale, she urges the court to dispense with the production of the said documents by the 1st Respondent, since the trustee has already appended her signature, rendering the signature of the 1st Respondent superfluous. She is in urgent need of medical supplies and attention for her sick brother, school fees and related subsistence expenses. It is unjust for one beneficiary to hold the Applicant together with other beneficiaries at ransom, by refusing to cooperate or execute the necessary documents to implement the court orders herein. She urges the court direct the 1st Respondent to execute all the necessary documents forthwith, and provide her bank details for the completion of the sale. Unless the orders sought are granted, they risk being sued by the buyer for breach of the sale agreement as they have already expended substantial amounts for processing of the lease, conveyancing, survey fees, land rates and penalties.
3. The Respondents did not file any replying Affidavits to the application.

Submissions

4. By submissions dated 20/6/2024, the Applicant urges that the completion of the sale process has been fundamentally frustrated by the 1st Respondent's refusal to execute the transfer documents, and cites Succession Cause No. 527 of 1981 In the Matter of the Estate of Mbiyu Koinange (Deceased). She urges that the 1st Respondent has chosen to treat the Applicant and other beneficiaries with total contempt and malice by refusing to sign the documents, and thus the Deputy Registrar should be authorized to execute the same on her behalf. She urges that the 1st Respondent's conduct has been with no plausible explanation or justification other than derailing distribution of the estate. She prays for the application to be allowed with costs, and relies on *Morgan Air Cargo Limited v Everest Enterprises Limited* (2013) eKLR.
5. By submissions dated 8/7/2024, the 1st Respondent urges that she has no problem executing the documents so long as the Applicant and her family involve them in the process. She urges that the process of the sale is shrouded in secrecy and dishonesty. She urges that the legal fees of Kshs 600,000 allegedly paid to the firm of M/S John Muthomi & Co. Advocates should be deducted from the Applicant's share. She urges that she is willing to cooperate provided that her share of Kshs 20,000 is released to her in full.
6. The 2nd respondent associated herself with the Submissions of the Applicant.
7. The Administrator did not file any submissions, holding that the application did not affect the administrator.



Determination

8. The sole issue for determination is whether the application is merited.
9. The 1st Respondent has expressed her willingness to execute the transfer documents on condition that she receives her entitlement of Kshs 20,000,000 in full. She is unmoved that some expenses will and/or have so far been incurred and they must ultimately be settled. Who then should shoulder that burden? Those expenses are elaborately listed in the sale agreement dated 1/11/2023 to include Kshs 600,000 being legal fees paid to John Muthomi & Co. Advocates for drafting the sale agreement, Kshs 400,000 being commission for brokers engaged to source for the purchaser, Kshs 200,000 being land rates, Kshs 300,000 being legal fees paid to A.G Riungu & Co. Advocates for the first sales agreement entered into between the 2nd Respondent and the purchaser, and Kshs 500,000 being lease preparation charges by Boma Land Surveys and Standpoly Commission Agents.
10. It would be a travesty of justice for this court to yield to the 1st Respondent's irrational demands at the expense of the Applicant and the other beneficiaries. Needless to state, what is due for sharing between the beneficiaries is the net proceeds of the sale after all expenses have been paid by and on behalf of the estate.
11. The 1st Respondent has alluded to the fact that the negotiated purchase price for the plot was supposedly Kshs 50,000,000 and the Applicant is keen on unjustly enriching herself by intentionally curtailing the 1st Respondent's involvement in the sale. That insinuation is manifestly unfounded as the order issued by this court on 27/9/2023 was unequivocal that:

“Approval has been issued for sale and transfer of plot number Meru Municipality Kirukuri Block 11/49 (Undeveloped) to the one Stephen Ndungu Ngera at Kshs 40 million being the only interested buyer to date and the net proceeds be shared between Caroline Murerwa & Eric Muguna Murerwa in one half share equally and Tabitha Mwari Itwaruchiu the other one half share.”
12. The court finds no justification for the 1st Respondent is persistent failure to execute the transmission documents, and the court must stamp its authority under Section 47 of the Law of Succession Act, in ensuring justice is done to all the parties.

Orders

13. Accordingly, for the reasons set out above, this court finds merit in the Applicant's application dated 11/1/2024 and it is accordingly allowed as prayed in terms of prayers 3, 4 and 5 thereof.
14. There shall be no order as to costs.

Order accordingly.

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

EDWARD M. MURIITHI

JUDGE

Appearances

Mr. A. Muguku for the Applicant.

Ms. Mugo for the 1st Respondent



Mr. J. Muthomi for the 2nd Respondent.

Ms. Maina for Mutuma G. for the Administrator.

