



In re Estate of the Late David Mwangi Mwarangu (Deceased) (Succession Cause 2114 of 2013) [2024] KEHC 14307 (KLR) (Family) (24 October 2024) (Ruling)

Neutral citation: [2024] KEHC 14307 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2114 OF 2013
HK CHEMITEI, J
OCTOBER 24, 2024
IN THE MATTER OF THE ESTATE OF THE LATE OF
THE LATE DAVID MWANGI MWARANGU (DECEASED)**

BETWEEN

DORCAS WANJIRU MWANGI APPLICANT

AND

MARY WAMAITHA MWANGI OBJECTOR

RULING

1. In her summons dated 22nd August 2023 the Applicant seeks the following orders:-
 - (a) That this court be pleased to grant leave to the Applicant to file an appeal against the entire ruling and orders of this court dated 9th August 2023 and that the Notice of Appeal dated 15th August 2023 filed herewith be deemed to have been filed and served with such leave.
 - (b) That the time for purposes of filing the substantive appeal against the said ruling and orders be deemed to run from the date such leave is granted.
 - (c) Pending the hearing and determination of the intended appeal and order be issued staying the execution of this court's ruling and orders delivered on 9th August 2023 and or staying of any further proceedings in the matter.
2. The application is based on the grounds thereof and the sworn affidavit of the applicant dated the same date.
3. The gist of the Applicant's application has to do with the courts orders giving the 2nd objector property known as plot number A118 Umoja Inner core sector 3 which to her excluded all the rest of the



beneficiaries. The said property was of a higher value than the rest and that the court failed to take into consideration the said fact.

4. That the same was the prime property within the estate and therefore it was unfair for the court to allocate it to the protester without taking a valuation of the same.
5. The Respondent Mary Wamaitha Mwangi has opposed the said application vide her replying affidavit sworn on 6th October 2023. She claimed that the Applicant has not satisfied the grounds of stay pending appeal. That the applicant has all along enjoyed rent accruing from the said estate to her exclusion.
6. She further deponed that the applicant had conveniently left out the other limb as ordered by the court in the impugned ruling. On that score she was happy if the estate could be valued and her portion given to her as directed by the court.
7. The parties were directed to file written submissions which they have complied.
8. The parties essentially concentrated on the provisions of Order 42 rule 6 of the *Civil procedure rules* and submitted that the application was within all fours of the said rules.
9. That since there was no automatic appeal to the Court of Appeal it was imperative that the applicant is granted such leave to mount the appeal.
10. It was her case that the said ruling contradicted that of Musyoka J of 8th November 2022 as well as the consent dated 27th January 2021.
11. The Respondent on the other hand agreed with the ruling of the court arguing that the applicant had failed to satisfy the grounds laid down under Order 42 rule 6 of the *Civil procedure rules*.
12. That the Respondent shall continue suffering loss if the matter is prolonged at the Court of Appeal since she has been waiting for long to enjoy the fruits of the estate. She went on to state that as a matter of fact she had applied to have the estate provide for education of her children.

Analysis and determination.

13. The court has perused the application the responses as well as the submissions by the parties. The issue really is whether the Applicant has satisfied the grounds provided under Order 42 rule 6 of the *Civil procedure rules*.
14. The grounds are now well known, namely, whether the applicant shall suffer loss if the application is not allowed, whether the application has been made without undue delay, whether there is need to have security pending the said appeal and finally, whether the appeal shall be rendered nugatory should the application not allowed.
15. It is not disputed that the application has been made without undue delay.
16. The issue is whether the reasons advanced by the applicant are really merited.
17. I have looked at the two rulings namely by Musyoka J and Odero J in regard to the mentioned property.
18. In his judgement dated 11th April 2019 the learned judge, Musyoka J as regards the contentious property stated as hereunder:-

“ (c) That I declare that the 2nd Objector was a dependent of the deceased and is entitled to and I hereby allocate to her the following provisions-



- (i) The one unit she occupies in Umoja Inner core plot A118 and
- (ii) The shop at a residential building in Tasia plot A/158”

19. Meanwhile Odero J on 9th August 2023 ruled as follows:-

“In conclusion therefore I do allow this protest and make the following orders:-

- (1) the property known as plot no A118 Umoja Inner core Sector 3 be allocated entirely to the Objector.
- (2) In the alternative the administrator to conduct valuation of the assets comprising the estate. Thereafter the objectors share in the estate be hived off and transferred to her by the administrator.”

20. It appears to me that Musyoka J in his judgement may have referred to a single unit while Odero J referred to the entire premise comprising the said Plot No. 118A Umoja Inner core sector.

21. In my considered view therefore, I think the Applicant has some arguable ground on appeal. I further find however and do agree with the Respondent that the second limb of Judge Odero’s order could still be applied by the parties. This is however at their sole discretion.

22. Needless to state however that I think the application is meritorious for the want of clarity from the superior court and perhaps other reasons or grounds to be advanced by the Applicant.

23. Consequently, I hold that:-

- (a) Leave is hereby granted to the Applicant to file an appeal to the Court of Appeal and the Notice filed herewith together with the Memorandum of Appeal are deemed properly filed subject to payment of fees if any.
- (b) Pending the hearing and determination of the said appeal there be stay of execution of the orders dated 9th August 2023 and in particular touching property number 118A Umoja Inner core sector 3.
- (c) For avoidance of doubt this order does not apply to the rest of the deceased estate.
- (d) Costs shall be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 24TH DAY OF OCTOBER 2024.

H K CHEMITEI

JUDGE

