



REPUBLIC OF KENYA



In re Estate of Fatuma Jepemboi Abdala (Deceased) (Succession Cause E093 of 2008) [2024] KEHC 12132 (KLR) (11 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12132 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E093 OF 2008
RN NYAKUNDI, J
OCTOBER 11, 2024**

IN THE MATTER OF THE ESTATE OF FATUMA JEPKEMBOI ABDALA (DECEASED)

BETWEEN

ABDUL ROTICH PETITIONER

AND

**MADARAKA SALIM CHERUTO ALIAS MARY MADARAKA
PAUL RESPONDENT**

AND

SALIM KIPLAGAT SAID OBJECTOR

RULING

1. Before me for determination is an application dated 3rd July, 2024 expressed to be brought under the provisions of Art. 159 of the *Constitution*, Order 51 of *Civil Procedure Rules* and Section 1(A) of the *Civil Procedure Act*. The Objector/Applicant is seeking orders as follows:
 - a. Spent
 - b. This Honourable court be pleased to order the cancellation of title of that whole parcel of land known as Nandi/mosombor/612
 - c. Costs be provided for.
2. The application was grounded on reasons that this Honourable Court granted orders dated 28.02.2024 that the land designated as Nandi/mosombor/612 that the Deputy Registrar Environment and Land Court to sign the transfer documents on behalf of the Petitioner/Respondent of Abdul Rotich.



3. That the Petitioner/Respondent has failed/refused and or neglected to surrender the original title for parcel of land known as Nandi/mosombor/1612.
4. That the Land Registrar unable to produce a title deed for land parcel Nandi/mosombor/612.
5. Earlier on, Madaraka Salim Cheruto alias Mary Madaraka Paul had filed an application dated 16th January, 2023 seeking various orders. She sought orders thus:
 - a. Spent
 - b. The Petitioner/Respondent be directed and ordered to execute the transfer documents within 7 days.
 - c. In the alternative to (b) above, the Deputy registrar, Environment and Land Court to sign the transfer the documents of Abdul Rotich in respect to land parcel No. Nandi/Mosombor 612, he has refused, failed or otherwise been unable to sign the said documents.
 - d. Costs be provided for.
6. The application was based on grounds that the Objector and the Petitioner entered into a consent and the consent was recorded and filed in court. The Petitioner however did not sign the transfer despite being no appeal and stay on this matter.
7. The said orders were considered by this court and on 28th February, 2023 an order was issued granting orders (b) and (c) of the said application.
8. Back to the instant application, the applicant has now approached the court seeking a cancellation of that whole parcel of land known as Nandi/mosombor/612.

Determination

9. Section 47 of the *Law of Succession Act* and Rule 73 of the *Probate and Administration Rules* grants a succession court inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process. (see *Mbatha Mulavu & another v Annah Ndunge Mulavu & 3 others* (2018) eKLR.) Such powers include cancellation of title deeds such as in this cause where the Respondent has declined to surrender the title in his custody as directed by this court vide its orders dated 28th February, 2024.
10. Having considered that, I am of the considered view that the applicant has before this court established the grounds in support of his application dated 3rd July, 2024 which I hereby allow in the following terms: -
 - a. That title for Nandi/mosombor/612 is hereby deemed as lost and cancelled and shall revert to the names of the deceased Fatuma Jepkemboi Abdala.
 - b. The Land Registrar is hereby directed to initiate a process of cancellation and replacement of the title deed duly issued to the deceased and in the alternative, given the authenticity of the green card in reference to LR. Nandi/mosombor/612, the administrators be and are hereby allowed to transmit the estate of the deceased.
 - c. The administrators are hereby directed to visit the Uasin Gishu Land Registry offices to be facilitated in transmission of the estate.
 - d. The Applicant shall have the costs of the application.



DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 11TH DAY OF OCTOBER 2024

.....

R. NYAKUNDI

JUDGE

