



In re Estate of Ruth Wanjiku Kariuki (Deceased) (Succession Cause 114 of 2008) [2024] KEHC 12279 (KLR) (11 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12279 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 114 OF 2008
SM MOHOCHI, J
OCTOBER 11, 2024
IN THE MATTER OF THE ESTATE OF RUTH WANJIKU KARIUKI (DECEASED)**

BETWEEN

ESTHER NYOKABI NJANE APPLICANT

AND

PETER KAMAU KARIUKI RESPONDENT

RULING

1. Before this Court is a Notice of Motion Application dated 29th November 2023, filed pursuant to order 51 rule 1 of the *Civil Procedure Rules*, Section 47 of the *Law of Succession Act* Orders 1A, 1B and 3A of the *Civil Procedure Act* and all enabling provisions of the law. The Applicant seeks the following orders:
 - i. Spent.
 - ii. That the Honourable Court do issue orders for cancellation of title number Mau Summit/ Molo Farm block 5/183 (Moto) registered in the name of Lucia Njoki Kamau and half the parcel be registered in the name of Esther Nyokabi Njane.
 - iii. That the Honourable Court do issue an order for cancellation of title number parcels Mau Summit/Molo Farm Block 5/378 (Moto) registered in the name of Samuel Nyakwara Mogusu and to issue title deed for half the parcel in the name of Esther Nyokabi Njane.
 - iv. That the Land Registrar do amend the respective register for the above two parcels of land to reflect the new position.
 - v. That costs be provided for.
2. The grounds upon which the Application was predicated were as follows:



- i. That, the administrator despite signing a consent on 17th July 2018 on distribution of properties he knew he had already transferred to third parties.
 - ii. That, the administrator has failed to co-operate to have the registered owners surrender the titles for purposes of transfer to complete the distribution as per the consent rendered on 17th July 2018.
 - iii. That, the administrator has failed to perform his duties as an administrator and has frustrated the applicant on all stages of the Succession cause.
 - iv. That unless the orders are granted the applicant shall not benefit from the Estate.
 - v. That no prejudice shall be suffered if the application is granted.
3. It was the Applicant's case that, she is the wife of the deceased John Njane Kariuki who was a son of the late Ruth Wanjiku Kariuki her mother in law and who passed away on 13th March 1991.
 4. That, upon the death of the Applicant's mother in law, Peter Kamau Kariuki did petition for letters of administration without involving her and her children and the Court issued letters of Administration to Peter Kamau Kariuki and the grant was confirmed on 6th October 2008.
 5. That, the Applicant moved this Court raising objection and Peter Kamau Kariuki and her did record a consent dated 17th July 2018 and filed in Court the same day and the Court issued orders dated 30th May 2023 for the County surveyor to subdivide parcels Mau Summit/ Molo Farm Block 5/378 (Moto) and Mau Summit/ Molo Farm block 5/183 (Moto).
 6. That, the Respondent/Administrator failed and/or refused to sign the mutations and the Deputy Registrar did sign the same according to the orders granted on 22nd September 2023.
 7. That, the District Surveyor went to the ground and subdivided the two parcels but when it came to registration in lands office it was discovered that the administrator had transferred parcel No. Mau Summit/ Molo Farm block 5/183 (Molo) to his wife Lucia Njoki Kamau.
 8. The Applicant exhibited the official search parcel Mau Summit/ Molo Farm Block 5/378 (Molo) and parcel No. Mau Summit/ Molo Farm block 5/183 (Molo) revealing the alleged fraudulent transfers and was accordingly advised to get a judicial order for the cancellation of the titles so irregularly issued.
 9. Despite Service upon the Administrator, and interested parties and repeated summons upon them and the Administrator having appointed counsel to enter appearance and Mr. Simiyu Advocate having appeared before Court once on behalf of the Administrator on the 20th of June 2024.No Response was forthcoming.
 10. As at the time of preparation of this Ruling none of the Parties had filed any written submissions and the Administrator had maintained stealth silence and no even put a response.
 11. The Conduct of the Administrator is unacceptable and falls away from the legal and statutory obligations placed upon him.
 12. 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. Such powers include cancellation of title deeds obtained through fraud or where there has been an abuse of the process of the Court.



13. The Applicant has sought an order of cancellation of titles that the respondent obtained fraudulently and irregularly and passed on titles to third parties. The power to do so was discussed in the case of *Santuzza Bilioti alias Mei Santuzza (Deceased) v Giancarlo Falasconi* (2014) eKLR where the Court held that: -

“...the succession Court has powers to order a title deed to revert to the names of a deceased person. This in effect amounts to cancellation of the title deed. Further, a succession Court can order a cancellation of a title deed if a deceased’s property is being fraudulently taken away by non-beneficiaries such as where the property is being sold before a grant is confirmed.”

14. Having keenly perused the Court record, it is apparent that the Respondent/Administrator in an effort to subvert the course of justice entered a consent while transferring the properties to his wife and a third-party, a despicable conduct that in itself is contemptuous of the Court and would warrant punitive sanction.

15. The parties hereto are bound by the consent order dated 17th July 2018. It was further stated in *Kenya Commercial Bank Ltd v Specialized Engineering Co. Ltd* (*supra*) that;

“the making by the Court of a consent order is not an exercise to be done otherwise than on the basis that the parties fully understand the meaning of the order either personally or through their advocates and when made, such as order is not lightly to be set aside or varied save by consent or on one or either of the recognized grounds.”

16. This Court is persuaded that it is in the interested of justice to allow the Application on the following terms:

- i. An Order is hereby issued to the Registrar of Lands Nakuru to forthwith rectify the register, by cancelling All entries including transfer tonthe name of Samuel Nyakwara Mogusu made after 2008 and revert back Titles to parcel Mau Summit/ Molo Farm Block 5/378 (Molo) to the names of the deceased Ruth Wanjiku Kariuki.
- ii. An Order is hereby issued to the Registrar of Lands Nakuru to forthwith rectify the register, by cancelling All entries including transfer to the name of Lucia Njoki Kamau made after 2008 and revert back Titles to parcel No. Mau Summit/ Molo Farm block 5/183 (Molo) to the names of the deceased Ruth Wanjiku Kariuki.
- iii. That the Registrar of Lands Nakuru to forthwith register the Transmissions upon parcel Mau Summit/ Molo Farm Block 5/378 (Molo) and parcel No. Mau Summit/ Molo Farm block 5/183 (Molo) as per the Consent Order dated17th July 2018

17. Costs of this Application are granted to the Applicant.

It is So Ordered.

SIGNED, DELIVERED VIRTUALLY ON TEAMS PLATFORM ON THIS 11TH OCTOBER 2024

MOHOCHI S.M

JUDGE

