



**In re Estate of Jeremiah Njagi Samson Murenga alias Njagi Samson (Deceased) (Probate & Administration E002 of 2020) [2023] KEHC 556 (KLR) (6 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 556 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
PROBATE & ADMINISTRATION E002 OF 2020**

**RM MWONGO, J**

**FEBRUARY 6, 2023**

**(FORMERLY NYERI HIGH COURT SUCC. CAUSE NO. 761 OF 2011)**

**IN THE MATTER OF THE ESTATE OF LATE JEREMIAH NJAGI  
SAMSON MURENGA ALIAS NJAGI SAMSON (DECEASED)**

**BETWEEN**

**JANE WANGARI MURIUKI ..... APPLICANT**

**AND**

**MERCY NJERI NJAGI ..... RESPONDENT**

**RULING**

**The Application**

1. The application before me is a summons dated October 15, 2020 seeking to revive a purported summons for revocation dated 26.5.2014 and for orders as follows:
  1. That the application be certified as urgent in the first instance and be heard *ex-parte*.
  2. That the summons for revocation of grant dated May 26, 2014 filed together with the application dated May 26, 2014 be deemed as duly filed and both the applications be heard and determined on merits.
  3. That there be a stay of proceedings in Kerugoya Chief's Magistrate's Court ELC Case No 41 of 2020 involving Lawrence Mugwimi Njagi and Jane Wangari Muriuki alias Jane Njeri Ngagi the applicant herein over Land Parcel No Ngariama/Rung'eto/2443 a resultant of Land Parcel No Ngariama/Rung'eto/76 the subject matter herein pending the hearing and determination of this application.
  4. That there be a stay of proceedings in Kerugoya Chief's Magistrate's Court ELC Case No 41 of 2020 involving Lawrence Mugwimi Njagi and Jane Wangari Muriuki Alias Jane Njeri Njagi the



Applicant Herein Over Land Parcel No. Ngariama/Rung'eto/2443 a resultant of Land Parcel No Ngariama/Rung'eto/76 the subject matter herein pending the hearing and determination of the summons for revocation of grant herein.

5. That a prohibitory, inhibition order be issued against Land Parcel No Ngariama/Rung'eto/76 the subject matter herein and all the resultant land parcels pending the hearing and determination of this application.
  6. That a prohibitory, inhibition order be issued against Land Parcel No Ngariama/Rung'eto/76 the subject matter herein and the resultant land parcels pending the hearing and determination of the summons for revocation of grant herein.
  7. Costs be in the cause.
2. The application is premised on the affidavit of Jane Wangari Muriuki and on the grounds hereunder and other reasons to be adduced during the hearing:
- a. This matter was consolidated with Embu High Court Succession Cause No 29 of 2012 where the applicant filed a citation against the respondent herein.
  - b. The grant herein was confirmed without the knowledge of the applicant while the order for consolidation above said is still in force.
  - c. While pending the hearing and determination of this matter, the respondent executed the grant herein again without the knowledge of the applicant and pending the citation above said.  

Lawrence Migwi Njagi has sued the applicant herein with an intention of removing her from Land Parcel No Ngariama/Rung'eto /2443 a resultant of Land Parcel No Ngariama/Rung'eto /76 the subject matter herein.
  - d. The applicant and her family members were born and raised on the subject matter herein and have developed half portion of the same and constructed permanent buildings and stand to lose irreparably if evicted from the subject matter land.
  - e. The subject matter land on the ground is not sub-divided and her family have been living on the land without interference.
  - f. The respondent herein executed the grant to defeat the hearing and determination of this matter.
  - g. The beneficiaries who were given the resultant land parcels including the respondent are intending to sell their respective portions to the detriment of the applicant and her family members.

### **Summons for Revocation of Grant dated 26.5.2014.**

3. This Summons, which is placed in the file that was in Nyeri High Court is an application by the applicant using the names Jane Wangari Muriuki and also Jane Njeri Njagi. When the file came up before the Judge in Nyeri on 3.6.2014, that application was not dealt with. The application before court was one dated 28.5.2014 seeking stay orders in respect of the subject property. The Judge issued temporary stay orders against further dealings with LR No Ngariama/Rung'eto/76. That application was fixed for hearing on 30.6.014, but application was never heard in Nyeri before the file was transferred to Kerugoya by a court order dated 2.11.2020. The so-called application for revocation dated 26.5.2014 was never acknowledged as filed or as being in existence nor was it brought to the court's attention.



4. In the affidavit supporting the summons for the application dated 28.5.2014 Jane Njeri Njagi asserts that she is a daughter of the deceased and that the succession was preferred by her sister. In the affidavit in support of the unfiled summons for revocation dated 26.5.2014 the applicant described herself as a beneficiary of the estate of the deceased; she states that she did not consent to the filing of the succession cause and that she and her siblings were left out as beneficiaries of the deceased estate.
5. It is necessary to see what had transpired in the file reference 29/2012 in light of an order of consolidation issued on 27.9.2012.

#### **The File and Record of Proceedings in Embu Succession No 29/2012**

6. The original file Succession No 29/12 Embu is entitled Jeremiah Njagi, Samson alias Njagi Samson Deceased v Jane Wangari Muriuki Petitioner.
7. The first activity on the file is an affidavit in support of a citation by Jane Wangari Muriuki dated 24.1.2012 and filed on 25.1.2012. Simultaneously filed is an authority to swear and plead documents dated 24.1.2012 wherein Jane Wangari Muriuki is given authority to swear and plead documents by and on behalf of Dorothy Wawira Muriuki; Douglas Kangangi Muriuki, Jason Mbogo Muriuki, Mercy Njeri Muriuki and Jack Mathagu Muriuki.
8. In the said affidavit dated 24.1.2012, Mercy Njeri Njagi is cited as the widow surviving the deceased. The citors, including Jane Wangari Muriuki are described as daughter and sons of the deceased. No supporting documentation of that alleged fact is annexed.
9. The first mention for the file hearing date was on September 27, 2012 before Ong’udi, J At the mention Mr Mahan and Mr Igati were present for the Objector and Petitioner, respectively. The orders give were as follows:

“By consent this file is hereby transferred to Nyeri High Court for purposes of consolidation with Nyeri High Court Succ Cause No 76/2011.  
Mention [on] 26.10.2012 before Nyeri High Court”.
10. There is no record concerning what occurred on the given date of 26.10.2012 and the proceedings are silent until 8.3.2013 when summons for confirmation of grant was fixed for July 12, 2013. Indeed, nothing happened as far as proceedings are concerned, until 20.2.2014, when the grant was confirmed.

#### **Succession File No 761/2011 Nyeri**

11. This file relates to the estate of Jeremiah Njagi Murenga alias Njagi Samson. The file has no proceedings. All it contains is the Petition for grant of letters of administration and supporting forms and documents for the petition. The application for grant was duly processed, advertised as GN16562 on December 30, 2011 and a grant issued on February 17, 2012.

#### **Submissions**

12. The applicant’s position as I understand it, is simply that by the time of confirmation of grant on 20<sup>th</sup> February 2014 her citation had never been heard despite it being consolidated with the main succession cause. Thus, she filed a notice of motion seeking orders of prohibition and restriction against dealings with the land because she and her siblings had been in occupation of a portion of LR No Ngariama/Rung’eto /76, and had done developments on it.



13. Further the applicant argues that when the court set her summons for hearing before Wakiaga J, on 3.6.2014, it was then that she learned the Judge issued an order staying any dealings with L.R No. Ngariama/Rung'eto /76 pending the hearing of the summons. In disregard of the said orders, the respondents proceeded to conclude transaction on the land.
14. The Respondent's position is that the matter has a long history of being in court; that the applicant's case was intertwined with that of her mother Gladys Wandia and that such matter had been dismissed by the courts on many occasions. Thus, that the matter is re-judicata and the court has no jurisdiction to hear the applicant on the application for revocation. That the application is a sham and the applicant is a vexatious litigant; that the document filed summons for revocation dated 26.5.2014 was never filed in court; that the citation was overtaken by events when the file reference 29/2012 was consolidated with Succ 761/2011 and the applicant became an objector but did not follow through.
15. I have carefully considered the application herein; the documents in support of each party's case and the representations of parties, and the information in the record of proceedings on the files herein.
16. From the foregoing, I make note of the following observations as matters of fact:
  - a) The applicant's citation in the file Succ 29/2012 was by consent of parties consolidated with Succ 761/2011 by an order of the court on 27.9.2012. Both parties, petitioner and objector, were duly represented by counsel.
  - b) There is no indication in the record of proceedings that upon consolidation, the citation was heard as an objection. There appears to have no follow up on the same.
  - c) The grant was confirmed on 2.2.2014.
  - d) On 30.5.2014 the applicant filed under certificate of urgency a notice of motion dated 28.5.2014 seeking to restrict and prohibit any dealings with L.R. No. Ngariama/Rung'eto /76. That motion came up on 3.6.2014 and Wakiaga J, stated:

"I hereby grant a temporary order against further dealing with LR No Ngariama/Rung'eto /76 pending the [.....] hearing on 30.6.2014 the Respondent to be served".
  - e) On 30.6.2014 there was no appearance by any of the parties; in fact, the file went "cold" until 27.1.2017 when the application dated 28.5.2014 was fixed for hearing on 6.7.2017.
  - f) There is no evidence that the document entitled summons for revocation of grant dated 26.5.2014 was ever filed. It has no court stamp; does not feature as an annexure to any document and is not noted at all in the proceedings, nor was it ever given a date.
  - g) The Notice of Motion application dated 28/5/2014 makes no reference to the unfiled summons for revocation of grant dated 26.5.2014.
17. In light of foregoing, I am unable to find any reason or justification upon which I can order that the document entitled summons for revocation of grant dated 26.5.2014 be deemed as duly filed as sought in prayer 2 of the present application. That document was in fact never paid for or filed.
18. With regard to the temporary orders issued by Wakiaga J, on 3.6.2014 under the certificate of urgency, the applicant did not follow these up until 6.7.2017. Being temporary orders for which a date was given for hearing of the application, and none of the parties having presented themselves for hearing thereof for 3 years; it is safe to hold that the urgency of the certificate and temporary orders expired by effluxion of time.



19. With regard to the orders sought for stay of proceedings in Kerugoya ELC No 41 of 2020, in respect to LR No Ngariama/Rung'eto /2443 stated to be a sub-division of LR No Ngariama/Rung'eto /76, I am of the view that the proper court to issue a stay thereon would be the ELC Court at first instance or upon refusal; on an appeal to the appellate division of the ELC.
20. Ultimately, I come to the conclusion that the Application now before me fails and is hereby dismissed.  
Orders accordingly.

**DATED AT KERUGOYA THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2023**

**R. MWONGO**

**JUDGE**

In the presence of:

Igati for Applicant

Ngigi holding brief for Bali -Sharma for Respondent

Court Assistant - Murage

