



In re Estate of Francis Manyara (Deceased) (Succession Cause 96 of 1993) [2023] KEHC 728 (KLR) (2 February 2023) (Ruling)

Neutral citation: [2023] KEHC 728 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 96 OF 1993
TW CHERERE, J
FEBRUARY 2, 2023**

BETWEEN

LUCY KATHURE MANYARA APPLICANT

AND

KINOTI MANYARA 1ST RESPONDENT

FRANCIS KATHURIMA KINOTI 2ND RESPONDENT

MICHAEL MANYARA KINOTI 3RD RESPONDENT

JOSEPH GACHECHE KINOTI 4TH RESPONDENT

RULING

1. By an order dated June 23, 2022, this court made the following orders. I have purposely repeated the one that is relevant to this application.

- 1.
- 2.
- 3.
- 4. It is ordered that the balance of Katheri Davis Nanyuki No 534 which is now LR No Ontulili/ Ontulili Block 1(Katheri)12XX which was distributed to Kinoti Manyara to hold in trust for deceased’s daughters be transmitted in the joint names of the daughters of the deceased namely Mary Mwendwa Manyara, Susan Kanana, Joy Karoki, Lucy Kathure and Caroline Makena
- 5.
- 6.

2. By summons dated October 13, 2022, applicant prays for the following orders:



1. That this court be pleased to issue an order of inhibition and the same be registered against LR Nos.Ontulili/ontulili Block 1 (katheri) 24XX, 24XX and 32XX to restrict any dealings or transfer of the said parcels and the Land Registrar Meru be directed to register the same
 2. That this court reviews and/or sets aside paragraph 4 of the orders dated March 23, 2022 in its entirety
 3. That this court be pleased to order that 2 acres be excised from LR Nos Ontulili/ontulili Block 1 (katheri)24XX, 24XX and 32XX which are the resultant subdivisions of LR NoX Ontulili/ontulili Block 1 (katheri)1269 which was distributed to Kinoti Manyara to hold in trust for the daughters namely Mary Mwendwa Manyara, Susan Kanana, Joy Karoki, Lucy Kathure and Caroline Makena deceased notwithstanding that the resultant title deeds may not have been surrendered
 4. That this court be pleased to issue an order that in default of 2nd, 3rd and 4th respondents signing all the relevant documents to facilitate the transmission of the aforementioned 2 acres be excised from LR Nos.Ontulili/ontulili Block 1 (katheri) 24XX, 24XX and 32XX, the Deputy Registrar of the court be authorized to sign the same
 5. Costs be provided for
3. The application is supported by the grounds:
- i. That the correct description of the land parcel that Kinoti Manyara ought to have held in trust for the daughters of the deceased is LR No Ontulili/Ontulili Block 1(Katheri)12XX and not LR No Ontulili/Ontulili Block 1(Katheri)12XX as indicated in the court's ruling dated June 23, 2022
 - ii. That Kinoti Manyara instead of holding LR. No. Ontulili/OntuliliBlock 1(Katheri)12 for in trust for the daughters of the deceased transferred the same to his sons Michael Manyara Kinoti, Joseph Gacheche Kinoti and Francis Kathurima Kinoti who subsequently subdivided the land into LR Nos Ontulili/Ontulili Block 1 (Katheri) 24XX, 24XX, 24XX and 24XX now registered in the names of Joseph Gacheche Kinoti, Francis Kathurima Kinoti, Susan Nyaguthii Kinoti and Michael Manyara Kinoti respectively
 - iii. That Susan Nyaguthii Kinoti charged LR No Ontulili/ontulili Block 1 (katheri), 24XX to capital Sacco
 - iv. That Joseph Gacheche Kinoti subdivided LR No. Ontulili/ontulili Block 1 (katheri)24XX into LR No Ontulili/ontulili Block 1 (katheri)32XX and 32XX and sold the latter LR Nos Ontulili/ontulili Block 1 (katheri)32XX to Beatrice Monicah Wangechi Mbogo
 - v. That the daughters of the deceased can only get their share from LR Nos ontulili/ontulili Block 1 (katheri)24XX, 24XX and 32XX now registered in the names of Kinoti Manyara's sons
4. Application is also supported by the Applicant's affidavit sworn on October 13, 2022 to which are annexed green cards to demonstrate how LR No Ontulili/Ontulili Block 1(Katheri)12XX was transmitted.
 5. By his replying affidavit sworn on November 16, 2022, the 1st respondent explains that he did not comply with the court order that required him to him 2 acres on behalf of his sisters for the reason that they agreed to take land parcel Katheri/35.



6. Mary Mwendwa Manyara, Susan Kanana and Joy Karoki by their affidavit sworn on November 16, 2022 state that they do not support the applicant’s application on the ground that they have been given land parcel Katheri/35.
7. Francis Kathurima Kinoti by his affidavit sworn on November 22, 2022 associated himself with the averments by 1st respondent and by Mary Mwendwa Manyara, Susan Kanana and Joy Karoki.
8. I have considered the application in the light of affidavits and submission on record.
9. Review of court orders is governed by section 80 of the *Civil Procedure Act* which provides inter alia: -
Any person who considers himself aggrieved—
 - a. by a decree or order from which an appeal is allowed by this *Act*, but from which no appeal has been preferred; or
 - b. by a decree or order from which no appeal is allowed by this *Act*, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.
10. The procedural provisions for review under Order 45 rule 1 of the *Civil Procedure Rules* provide that: -
 - (1) Any person considering himself aggrieved—
 - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.
11. The Court of Appeal in *Anthony Gachara Ayub v Francis Mabinda Thinwa* [2014] eKLR restated the main grounds for review which are discovery of new and important matter or evidence; mistake or error apparent on the face of the record; or for any other sufficient reason and most importantly, the application has to be made without unreasonable delay.
12. Section 80 of the *Civil Procedure Act* and order 45 rule 1 of the *Civil Procedure rules* gives the court unfettered discretion to make such order as it thinks fit on sufficient reason being given for review of its decision. However, as it has been constantly stated, this discretion should be exercised judiciously and not capriciously.
13. In *National Bank of Kenya Limited v Ndungu Njau* (1997) eKLR the Court of Appeal held that:

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter”.



14. The ruling from which the Applicant seeks to review was delivered on June 23, 2022 and this application filed on October 17, 2022 without undue delay.
15. It has been demonstrated that there is an error apparent on the face of the record for the reason that the correct description of the land parcel that Kinoti Manyara ought to have held in trust for the daughters of the deceased is LR No Ontulili/Ontulili Block 1(Katheri)12XX and not LR No Ontulili/Ontulili Block 1(Katheri)12XX as indicated in the court's ruling dated June 23, 2022.
16. 1st and 2nd respondents do not deny that Katheri Davis Nanyuki No 534 also known as LR No Ontulili/Ontulili Block 1(Katheri) was not distributed as ordered by the court but was instead partitioned into two parcels LR No Ontulili/Ontulili Block 1(Katheri)12XX and 12XX in complete disobedience of the rectified certificate of confirmation of grant dated October 24, 2019.
17. In *Central Bank of Kenya & Another vs Ratalil Automobiles Limited & Others* Civil Application No Nai 247 of 2006, the Court of Appeal held that judicial power in Kenya vests in the courts and other tribunals established under the *Constitution* and that it is a fundamental tenet of the rule of law that court orders must be obeyed and it is not open to any person or persons to choose whether or not to comply with or to ignore such orders as directed to him or them by a court of law.
18. Court orders are not made in vain. If for any reason the administrator had difficulty in complying with the court orders, the honourable thing to do was to come back to court and explain the difficulties faced by the need to comply with the order for the reason that once a court order is made in a suit the same is valid unless set aside on review or on appeal.
19. The rectified certificate of confirmation of grant dated October 24, 2019 has not been set aside on review or on appeal and the administrator had a duty to comply and distribute the estate as ordered. (See *In re Estate of Gitere Kahura (Deceased)* [2019] eKLR),
20. Michael Manyara Kinoti, Joseph Gacheche Kinoti and Francis Kathurima Kinoti who are 1st respondent's sons were not beneficiaries to deceased's estate and any distribution made to them is a nullity and this court has jurisdiction to ensure compliance with its orders.
21. It is therefore hereby orders as follows:
 1. An order of inhibition be and is hereby issued against LR Nos Ontulili/ontulili Block 1 (katheri)24XX, 24XX and 32XX to restrict any dealings or transfer of the said parcels and the Land Registrar Meru be and is hereby directed to register the same
 2. Paragraph 4 of this court's orders dated March 23, 2022 is set aside and in its place it is hereby ordered:
 - i. The Land Registrar Meru is directed to cancel all titles arising out of LR Nos Ontulili/ontulili Block 1 (katheri)12XX and restore title number to LR No Ontulili/Ontulili Block 1(Katheri)12XX notwithstanding that the resultant title deeds may not have been surrendered
 - ii. Upon restoration of LR No Ontulili/Ontulili Block 1(Katheri)12XX, two acres thereof shall be transmitted in equal shares to the daughters of the deceased namely Mary Mwendwa Manyara, Susan Kanana, Joy Karoki, Lucy Kathure and Caroline Makena



- iii. The balance thereof shall be transferred equally to Michael Manyara Kinoti, Joseph Gacheche Kinoti and Francis Kathurima Kinoti with Beatrice Monicah Wangechi Mbogo getting 0.045 Ha out of Francis Kathurima Kinoti's share
3. Each party shall bear its own costs
4. In the event that any party does not sign the necessary transmission forms, the Deputy Registrar is hereby authorized to sign on their behalf
5. Mention On July 3, 2023 to confirm compliance

DATED AT MERU THIS 02ND DAY OF FEBRUARY 2023

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Applicant - Mr. Muthomi for John Muthomi & Co. Advocates

For 1st Respondent - Mr. Ondari for Leonard K. Ondari & Co. Advocates

For 2nd Respondent - Kaberia Arimba & Co. Advocates

For 3rd Administrator- Mr. Karanja for Mwirigi Kaburu & Co. Advocates

