



**In re Estate of Stanley Omambia Ogero (Deceased) (Probate & Administration  
228 of 2015) [2023] KEHC 2562 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2562 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
PROBATE & ADMINISTRATION 228 OF 2015**

**WA OKWANY, J**

**MARCH 23, 2023**

**IN THE MATTER OF THE ESTATE OF STANLEY OMAMBIA  
OGERO (DECEASED**

**BETWEEN**

**DUKE KEBASO OMAMBIA ..... 1<sup>ST</sup> APPLICANT**

**EVANS MONGARE OMAMBIA ..... 2<sup>ND</sup> APPLICANT**

**VITALIS NYACHIRO OMBAMBIA ..... 3<sup>RD</sup> APPLICANT**

**AND**

**PETER KABATI OMAMBIA ..... RESPONDENT**

**AND**

**WILSON KAISANGO OGERO ..... INTERESTED PARTY**

**RULING**

1. Through the Originating Summons (OS) dated January 11, 2022, the Applicants seek the following orders: -
  - (i) Spent
  - (ii) That this Honourable Court be pleased to issue Orders directing the Registrar of Lands Nyamira to cancel the entry of a caution registered by the Respondent against the Title to the Land known as LR No North Mugirango/146.
  - (iii) That this Honourable Court be pleased to issue Orders directing the Interested Party to conduct a survey, identify, allocate and transfer half of the property known as LR No North Mugirango/146 to the Estate of the later Selebina Nyamechi Omambia upon issuance and/



or removal of the caution as sought in prayer 2 herein above within 60 days or upon further Orders of the Court.

- (iv) That this Honourable Court be pleased to issue Orders for immediate eviction of the Respondent from the half of the parcel of land known as LR No North Mugirango/146 that is to be transferred to the Estate of Selebina Nyamechi Omambia in accordance with Prayer 3 herein above.
  - (v) That this Honourable Court be pleased to issue an Order restraining the Respondent, his agents, or anyone acting under his authority from trespassing, entering into, harassing, evicting, demolishing, intimidating and/or interfering with all the beneficiaries of the Estate of Selebina Nyamechi Omambia's ownership of half of the portion of land known as LR No North Mugirango/146 allocated and transferred to it as per Prayers Number 3 and 4 herein above.
  - (vi) That this Honourable Court be pleased to issue Orders directed to the Respondent to show cause as to why he should not be cited for intermeddling in the affairs of the Estate of the Late Stanley Ogero Omambia.
  - (vii) That the Officer Commanding Station, Nyamira Police Station do ensure compliance with prayers 3, 4 & 5 herein above.
  - (viii) That this Honourable Court do award any other orders it may deem just, fit and expedient to award in the interests of justice.
  - (ix) That the costs of this Application be provided for.
2. The OS is supported by the 2<sup>nd</sup> Applicant's affidavit and premised on grounds that: -
- (i) That as per the certificate of confirmation of grant that was confirmed and issued on the July 17, 2009 this Honourable Court confirmed and issued the grant in this matter.
  - (ii) That as per the grant, land known as LR No North Mugirango/146 is meant to be distributed equally among the two widows.
  - (iii) That since then the administrator to the Interested Party (Mr Wilson Kaisango Ogero) who is the Administrator of the Estate has been administering and registering and/or transferring the properties as per the grant.
  - (iv) That however, come to learn that one of the beneficiaries of the Estate – one Peter Kabati Omambia has since placed a caution on the property known as LR No North Mugirango/146 and thus frustrating the Administrator from administering the Estate as per the grant.
  - (v) That by having registered a caution on the property, the said Peter Kabati Omambia has thus frustrated the Administrator from performing his functions and ultimately blocked the rightful beneficiaries as of the said land as per the grant from rightfully benefiting.
  - (vi) That the Respondent has been violent and hostile towards the Administrator and beneficiaries of the Estate of Selebina Nyamechi Omambia and blocked them from accessing the property known as LR No North Mugirango/146 that was granted to them as per the confirmed grant.
  - (vii) That in view of the foregoing, it behoves this Honourable Court to intervene and avert a miscarriage of justice.



- (viii) That it is in the interest of justice that this Application is certified urgent and the Orders sought herein issued.
  - (ix) That the Respondent stands to suffer no prejudice if this Application is allowed.
  - (x) That it is in the interest of justice that this Application be certified urged.
3. The Respondent did not file any response to the application despite numerous court orders directing him to respond to the OS and despite the fact that he is duly represented by an Advocate in this matter.
  4. Directions were issued that the originating summons be canvassed by way of affidavit evidence and written submissions.
  5. The Applicants filed their written submissions dated April 14, 2022 wherein they expounded on the grounds in support of the summons. The Respondent did not file any written submissions and technically therefore, the application/Originating Summons remains unopposed.
  6. I have carefully perused the originating summons, the supporting affidavit and the Applicants' submissions. I note that even though the Originating Summons seeks several prayers, the main prayer is for the removal of the caution placed on the land that is the subject of the succession cause being LR No North Mugirango/146 so as to pave way for the distribution of the deceased's estate pursuant to the orders issued during the confirmation of grant.
  7. I note that it is not disputed that the grant herein was confirmed on July 17, 2009 and that to date, more than a decade after the said confirmation, the beneficiaries and administrators of the estate of the deceased have not distributed the estate citing lack of co-operation and/or frustration by the Respondent.
  8. I am satisfied that the Applicants herein have made out a case for the granting of the prayer for the removal of the caution placed on the suit land.
  9. Consequently, I allow the application dated January 11, 2022, albeit in part, only in respect to prayer 2 thereof. This court is of the view that once the caution placed on the land is lifted, any of the beneficiaries can proceed and effect the survey, transfer and allocate of the land to the respective beneficiaries in line with the mode of distribution contained in the Certificate of Confirmation of Grant.
  10. I make no orders as to costs.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIA MICROSOFT TEAMS THIS  
23<sup>RD</sup> DAY OF MARCH 2023.**

**W. A. OKWANY**

**JUDGE**

