



REPUBLIC OF KENYA



**In re Estate of Kiura Kinyua (Deceased) (Succession Cause
310 of 2012) [2023] KEHC 18008 (KLR) (22 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18008 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE 310 OF 2012
RM MWONGO, J
MAY 22, 2023**

N THE MATTER OF THE ESTATE OF KIURA KINYUA (DECEASED)

BETWEEN

CHARLES WAWERU KIURA APPLICANT

AND

MARY WANGIGE NYAGA 1ST RESPONDENT

BENSON MUCHIRI KARIA 2ND RESPONDENT

JAMES NJERU 3RD RESPONDENT

VIRGINIAS KABACI 4TH RESPONDENT

MICHAEL MUTHIKE MURIITHI 5TH RESPONDENT

BENSON MWANGI MURITHII 6TH RESPONDENT

NJAGI NDATHI 7TH RESPONDENT

FELIX NYAGA 8TH RESPONDENT

GACHOKI MURIUKI KIRII 9TH RESPONDENT

GITARI MURIITHI 10TH RESPONDENT

RULING

1. The applicant is the son of the deceased. and the 1st Respondent is the deceased's wife. They are the joint administrators of the estate of the deceased who died on December 1, 2011. The grant was issued on June 21, 2012, following a petition by the 1st Respondent and a cross petition by the applicant.



2. The petition indicated that the deceased had two properties: LR No Ngariama/Thirikwa/3025 and 3026. These parcels were sub-divisions of Ngariama/ Thirikwa/ 274 which was subdivided by the deceased, and some of the subdivisions had been transferred inter vivos.
3. On December 10, 2013, the court issued orders that no party should interfere with the deceased's property LR No Ngariama/Thirikwa/ 3025 and 3026. On January 28, 2014 the parties entered into a consent restraining the parties from intermeddling with the deceased's estate, in particular, LR Nos Ngariama/Thirikwa/ 3025 and 3026.
4. The applicant filed this motion on November 12, 2019, pursuant to Rules 49 and 63 of the Probate and Administration Rules, praying the following orders:
 1. That the Honourable court does cite Mary Wangige Nyaga for contempt and commit her to jail for violating the courts orders dated December 10, 2013 and January 28, 2014.
 2. That a temporary injunction be issued restraining the respondents their agents and/ or servants from entering into LR Ngariama/Thirikwa/3025 pending the hearing and determination of this application interparties.
 3. That a temporary injunction be issued restraining the respondents their agents and/ or servants from entering into LR Ngariama/Thirikwa/3025 pending the hearing and determination of this Succession Cause.
 4. That the Honourable court do cancel entries 2, 3, 4 and 6 in the register of land parcel Ngariama/Thirikwa/3025.
 5. That the cost of this application be paid by the respondents.
5. The application is based on, inter alia, the following grounds:
 1. On July 21, 2014 the 1st respondent caused the land Ngariama/Thirkwa/3025 to be transferred into her name claiming it was a gift from the deceased.
 2. That from the land register of parcel Ngariama/Thirikwa/3025 there has been several illegal and fraudulent entries on the green card that is entries 2,3,4 and 6 and the same ought to be cancelled.
 3. That the 1st respondent has sold the properties to the 2nd, 3rd, 4th, 5th, 6th, 7th and 8th respondents and either them and/ or their agents are on the ground.
 4. That the Chief of the area, Benson Muchiri Karia was also assisting in the illegal subdivision.
6. In addition to the grounds, the applicant has deposed to a 16 paragraphs supporting affidavit where he reiterated the above mentioned grounds.
7. The court directed the parties to canvass the application by way of written submissions, and they complied.

Applicant's Submissions

8. The applicant submits that it is only fair that the Respondents are permanently stopped from entering into the land as any transaction thereto and legally is illegal. The 1st Respondent can therefore only enter to what rightfully belongs to her. Orders are never made in vain, for without adherence to court orders the society will be flirting with anarchy.



1st Respondent Submissions

Sale and transfer

9. The 1st Respondent annexed a copy of the green card for land parcel number Ngariama/Thirikwa/3025. Entry number 2 shows that on 21/7/2014 the 1st respondent was registered as the owner of the land and title deed issued the same day as entry number 3. Entry number 4 shows that on 1/8/2014, the land was transferred to one Michael Muthike Muriithi but on 12/8/2014 entries 2 and 4 were cancelled. The same appears as, entry number 6. This means the land reverted to the name of the deceased, Kiura Kinyua. This application is dated November 12, 2018. It follows that at the time of filing the application, the wrongs complained of had long been corrected, and therefore the 1st respondent is not in breach of the said orders as at 12th November, 2018. There is no further evidence adduced to show that the 1st respondent sold the land.

Temporary Injunction

10. The applicant seeks orders of temporary injunction to restrain the respondents from entering land parcel number Ngariama/Thirikwa/3025 pending the hearing and determination of the succession cause. The 1st respondent is already a beneficiary of the land, as per the court's judgment, having been awarded 1/2 acre, but which she is contesting and intends to appeal. She cannot therefore be restrained from entering a parcel of land which she is a beneficiary. Further this succession cause is already determined and prayers (c) and (d) (? and 4) are already overtaken by events.

Cancellation of Title

11. The applicant seeks the cancellation of entries numbers 2,3,4 and 6 of the register for land parcel number Ngariama/Thirikwa/3025. There is already an order in entry number 6 for cancellation of all entries. This court cannot be asked to do what has already been done. An order cannot be issued in vain.

2nd, 3rd, 4th, 5th, 7th and 9th Respondents submissions

Prayer 3 & 4

12. The respondents submit that prayers (c) and (d) have been overtaken by events since the succession matter was concluded and the judgment was issued on February 7, 2019 in favour of the applicant who was the protestor in this case.

Cancellation of entries 2,3 and 4 in the Land Register

13. Entry Number 4 indicates that Land Parcel Number Ngariama/Thirikwa/3025 was transferred to one Michael Muthike Muriithi, who is the 5th Respondent in this matter. That the 5th Respondent was an innocent purchaser for value without notice and that he was not a party to the alleged fraud and illegality and therefore it would be unfair and unjust to cancel entry number 4.

Issues for Determination

14. The issues arising for determination are as follows:
1. Whether the 1st Respondent should be cited for contempt of court.
 2. Whether a temporary injunction be issued restraining the respondents, their agents and/or servants from entering into that suit land.



3. Whether the entries 2, 3, 4 and 6 in the register of land parcel Ngariama/ Thirikwa/ 3025 should be cancelled.

Analysis and Determination

Whether the 1st Respondent should be cited for Contempt of Court

15. Contempt of court is that conduct or action that defies or disrespects the authority of court. *Black's Law Dictionary* 9th Edition, defines contempt as follows:

“The act or state of despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice.”

16. It cannot be disputed that on December 10, 2013 this court issued orders to the effect that there should be no interference in any way with land parcel Ngariama/ Thirikwa/3025 and Ngariama/ Thirikwa/3026.
17. However, on July 21, 2014 the 1st respondent caused the land Ngariama/ Thirikwa/ 3025 to be transferred into her name claiming it was a gift from the deceased. That the 1st respondent has sold the properties to the 2nd, 3rd, 4th, 5th, 6th, 7th and 8th respondents and either them and/or their agents are on the ground.
18. The 1st Respondent submits that since the application is dated November 12, 2018, the wrongs complained of in the green card of the suit land had long been corrected, As such, the 1st respondent was not in breach of the said orders as at November 12, 2018. There is no further evidence adduced to show that the 1st respondent sold the land.
19. In the case of *Sheila Cassatt Issenberg & another v Antony Machatha Kinyanjui* [2021] eKLR contempt is defined as follows:

“Contempt is conduct that impairs the fair and efficient administration of justice. Section 5 of the *Judicature Act* confers jurisdiction on the superior courts to punish for contempt.”
20. The green card for land parcel number Ngariama/Thirikwa/3025 shows as follows. Entry number 2 indicates that on 21/7/2014 the 1st respondent was registered as the owner of the land and title deed issued the same day as entry number 3. Entry number 4 shows that on 1/8/2014, the land was transferred to one Michael Muthike Muriithi but on 12/8/2014 entries 2 to 4 were cancelled. The same appears as entry number 6.
21. On this basis the 1st respondent should not be cited for contempt of court. In any event actions of contempt have a limitation period of six (6) months from the date of its commission under the *Contempt of Court Act* No 46 of 2016, which provides as follows:

“34. No court shall initiate any proceedings for contempt of court either on its own motion or otherwise after the expiry of a period of six months from the date on which the contempt of court is alleged to have been committed.”

Clearly therefore, the limitation of actions under the *Contempt of Court Act* kicks in, and disallows any action against contemnors..



Whether a temporary injunction be issued against the respondents

22. The applicant seeks orders of temporary injunction to restrain the respondents from entering land parcel number Ngariama/Thirikwa/3025 pending the hearing and determination of the succession cause.
23. The law governing the granting of interlocutory injunction is set out under order 40(1) (a) and (b) of the *Civil Procedure Rules 2010* which provides that: -

“Where in any suit it is proved by affidavit or otherwise—

 - (a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree
 - (b) That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further.”
24. The 1st respondent submits that she is already a beneficiary of the land, as per the court’s judgment, having been awarded 1/2 acre, but which she is contesting and intends to appeal. She cannot therefore be restrained from entering a parcel of land of which she is a beneficiary.
25. The other respondents submit that prayers (c) and (d) have been overtaken by events since the succession matter was concluded and the judgment was issued on February 7, 2019 in favour of the applicant who was the protestor in this case.
26. The court ruled that land parcel number Ngariama/Thirikwa/3025 should be distributed to Lucy Wanja and the same should be reflected in the confirmed grant.
27. Consequently, the prayer for temporary injunction has been overtaken by events, and no order can be made in that regard.

Cancellation of entries 2,3 and 4 in the Land Register

28. The applicant seeks the cancellation of entries numbers 2,3,4 and 6 of the register for land parcel number Ngariama/Thirikwa/3025.
29. The 1st respondent submits that there is already an order in entry number 6 for cancellation of all entries. The green card indicates on entry number 6 on 12/8/2014 an order for cancellation of entry number 2- 4 pending the hearing and determination of Succession Cause No 310 of 2012.
30. On February 7, 2019 the court ruled that land parcel number Ngariama/Thirikwa/3025 should be distributed to Lucy Wanja and the same should be done after confirmation of grant. Further, the court noted that the said parcel of land was in the name of the deceased. This confirms that the parcel of land had not been sold to third parties as alleged by the applicant.
31. Thus, the cancellation of the entries 2, 3 and 4 in the Land Register has been overtaken by events after the court ruling on February 7, 2019.



Conclusions and Disposition

32. As to whether the 1st Respondent should be cited for contempt of court, the answer is No This ground fails.
33. As to whether a temporary injunction should be issued restraining the respondents, their agents and/ or servants from entering into that suit land, the answer is that the said prayer has been overtaken by events, and no order can be made in that regard.
34. As to whether the entries 2, 3, 4 and 6 in the register of land parcel Ngariama/ Thirikwa/ 3025 should be cancelled, the answer is that the cancellation of the said has been overtaken by events following the Court's ruling on February 7, 2019.
35. Finally, it is to be noted that this court lacks jurisdiction to order rectification of entries in a Green Card. Section 80 of *Land Registration Act* grants the Environment and Land Court powers to rectify entries made on a title.
36. In the result the application fails and is dismissed with no orders as to costs.
37. Orders accordingly.

DATED AT KERUGOYA THIS 22ND DAY OF MAY, 2023.

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RICHARD MWONGO

JUDGE

In the presence of:

1. Ms. Muturi - holding brief for Magee for Applicant
2. Ms. Wanjiru - holding brief for Kagio for 1st Respondent
3. Mr. Githinji - holding brief for Makworo for 2nd 3rd 4th 5th 9th & 10th
4. No representation - Benson Muriithi 5th Respondent
5. No representation - Gitari Muriithi 10th Respondent
6. Mr. Murage, Court Assistant

