



REPUBLIC OF KENYA



**In re Estate of Peter Munubi Vuyiya (Deceased) (Probate & Administration
30 of 1999) [2023] KEHC 3815 (KLR) (2 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 3815 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 30 OF 1999
RN NYAKUNDI, J**

MAY 2, 2023

**IN THE MATTER OF THE ESTATE OF THE LATE PETER MUNUBI
VUYIYA**

BETWEEN

FRANKLIN MUNUBI VUYIYA 1ST PETITIONER

PAMELA SAUSU KIOKO 2ND PETITIONER

AND

MBIYU PETER MUNUBI RESPONDENT

RULING

1 There are two pending applications in this matter, one dated December 14, 2022 and another dated January 16, 2023. The Summons by the petitioners dated December 14, 2022 seeks the following orders;

1. Spent
2. That a preservative order he issued restraining the Respondents either by themselves, their servants, agents or any other person acting from their authorization or control be restrained from intermeddling with the estate by either trespassing upon, constructing any structures, selling, developing, leasing, tilling, deriving any benefits and undertaking or continuing carrying out any further development on Land Registration Kakamega/south Maragoli/lugovo/925 the subject of the administration herein.
3. That an order he issue declaring that the transfer of the estate property Land Registration Kakamega/south Maragoli/lugovo/925 to the 2nd Respondent without knowledge of the administrators/beneficiaries in the estate was illegal hence null and void.



4. That Conservatory orders restraining the Respondents from alienating, transferring, selling and disposing the estate property Land Registration Kakamega/south Maragoli/lugovo/925 of the deceased estate in any manner whatsoever pending the hearing and determination of this application.
5. That this Honourable Court be pleased to issue an order directing the Interested Party file the status report of the estate property Land Registration Kakamega/south Maragoli/lugovo/925 within 21 days to ascertain the correct position of the estate property failing which a warrant of arrest he issued to the said Interested party.
6. That the costs of the Application he provided by the Respondents and Interested party
- 7 The Notice of Motion application dated January 16, 2023 by the respondent seeks the following orders;
 1. Spent
 2. There be stay of execution of orders granted on the January 22, 2022 pending the hearing and determination of this application.
 3. This honourable court be pleased to review, set aside, vary or discharges its orders issued on December 22, 2022 and all consequential order arising thereof.
- 8 I have perused the file and considered both applications and the affidavits sworn in support of the same. this is a very old matter and is crippled with very litigious parties, all advised by their advocates in their actions. I feel that it is in the interests of justice that some sanity be brought to this matter as the interlocutory applications, in the manner they have been filed, are an abuse of the court process.
- 9 The respondent on his part wishes to set aside preservatory orders whose purpose is to protect the estate until the succession cause is determined. The petitioners on the other hand, seek preservatory orders pending the distribution of the estate and further, a declaration that the transfer of the parcel subject of the estate be declared null and illegal. It is not lost on the court that intermeddling with the estate of the deceased is against the provisions of the Law of Succession Act and therefore it would be moot to make a declaration on an issue that is clearly stated in statute. That notwithstanding, I shall consider the applications and the prayers sought.
- 10 I have noted the copy of the decree dated September 19, 2018 , the effect of which would be, that the ownership of the parcel subject of the succession cause by the deceased, Ruth Auma Vuyiya was extinguished due to adverse possession and I am of the view that the report of the Vihiga County Land Registrar will put an end to this contentious issue.
- 11 Given the sequence of events and the facts leading up to this juncture, I hereby vary the orders issued on December 22, 2022 and order as follows;
 1. A conservatory order is hereby issued restraining the Respondents either by themselves, their servants, agents or any other person acting from their authorization or control be restrained interfering with the estate of the deceased, specifically the parcel of land known as Land Registration Kakam Ega/south Maragoli/lugovo/925 in any manner whatsoever pending the determination of this cause.
 2. The Land Registrar, Vihiga County is hereby ordered to file a status report on the parcel of land known as Land Registration Kakamega/south Maragoli/lugovo/925 within 21 days of this order, failure to which warrants of arrest to issue.



12 It is my considered view that these orders will enable the court determine the status of the estate with finality and establish if the parcel of land is available for distribution.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 2ND DAY OF MAY 2023

R.NYAKUNDI

JUDGE

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