



**In re Estate of Francis Kanyeri Wamai alias Francis Kanyiri Wamai alias  
Francis Kanyeki Wamai (Deceased) (Succession Cause 2823 of 2011)  
[2023] KEHC 21143 (KLR) (Family) (21 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21143 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 2823 OF 2011**

**MA ODERO, J**

**JULY 21, 2023**

**BETWEEN**

**ANTHONY MBUTHIA KANYIRI ..... APPLICANT**

**AND**

**MICHEAL MUREITHI WAMAE ..... RESPONDENT**

**RULING**

1. Before this Court for determination is the summons dated October 14, 2022 by which the Applicant Anthony Mbuthia Kanyiri seeks the following orders:-

- ' 1. Spent.
2. That Micheal Mureithi Wamae, his servants, agents assigns or otherwise be restrained by an order of temporary injunction from interfering, alienating, disposing, transferring, leasing or possessing and occupying land reference number NAIROBI BLOCK 136/7843 and NAIROBI BLOCK 136/7840.
3. That the titles to the said properties do revert to the estate of the Deceased.
4. That Micheal Mureithi Wamae be restrained by way of an injunction from intermeddling in the estate of the Deceased.
5. That Micheal Mureithi Wamae be removed as an administrator of the Estate of the Deceased.
6. That the costs of the application be provided for.'



2. The summons which was premised upon Rule 63 of the *Probate and Administration Rules*, Order 40 Rule 1, Order 1A of the *Civil Procedure Rules* and Sections 3, and 3A of the *Civil Procedure Act* was supported by the Affidavit of even date and the supplementary Affidavit dated April 12, 2023 sworn by the Applicant.
3. The Respondent/Administrator Micheal Mbuthia Wamae filed Grounds of opposition to the Application dated March 17, 2023 as well as a Replying Affidavit dated March 17, 2023.
4. The matter was canvassed by way of written submissions. The Applicant filed written submissions dated April 17, 2023 whilst the Respondent relied upon his written submissions dated October 14, 2022.

### **Analysis and Determination**

5. This Succession Cause relates to the estate of the late Francis Kanyeri Wamai alias Francis Kanyiri Wamai alias Francis Kanyeki Wamai (hereinafter 'the Deceased') who died intestate on May 1, 2008. A copy of the Death certificate serial number 122219 is annexed to the Petition for letters of Administration
6. The Deceased was survived by the following persons:-
  - a) Justina Muringa Kanyiri - Widow/Wife
  - b) Peter Wamae Kanyeri - Son
  - c) Patricia Wanjiku Kigotho - Daughter (Deceased)
  - d) Joseph Wainaina Kanyiri - Son
  - e) Claire Njeri Wamae - Daughter
  - f) Susan Wanjiru Mungai - Daughter
  - g) Micheal Mureithi Wamae - Son
  - h) Anthony Mbuthia Kanyiri - Son
  - i) Alice Njoki Wamae Lara - Daughter
  - j) Doris Wairimu Njomo - Daughter
  - k) Martin Mbugua Kanyiri Wamae - Son
  - l) Sylvia Watu Kanyeri - Daughter
  - m) Thomas Gatura Kanyiri Wamae - Son
  - n) Cecilia Wanjiru Kanyiri - Son (Deceased)
  - o) John Waweru Kanyiri - Son (Deceased)
  - p) Mary Njambi Muturi - Daughter (Deceased)
  - q) Maureen Wangui Waweru - Grand Daughter
  - r) Njeri Muturi - Grand Daughter
  - s) Evelyne Ann Wangui Mwangi - Grand Daughter



7. The estate of the Deceased was said to comprise the following assets:-
- i) Narok/Ololpironto/510 12 Acres
  - ii) Kitengela Land 10 Acres
  - iii) Ngong/Ngong/1746 3 Acres
  - iv) Ruai ¼ Acres
  - v) Ruai ¼ Acres
  - vi) Industrial Area/209/111488 1/16 Acres
  - vii) Dagoretti/Riruta/S95 ¼ Acre
  - viii) Dagoretti/Riruta/S95 ¼ Acre
  - ix) LR Dagoretti/Ruthimutu 69 61/4 Acres
  - x) Barclays Bank A/C No xxxx
  - xi) Motor Vehicle Registration Number KVL xxx Pickup
  - xii) Lorry/trade KTV xxx,
  - xiii) City Street Shops
  - xiv) Shares in Centum, KPLC, EABL, BAT, CFC Bank, KCB, Barclays, CFC Insurance Holdings

Total estimated value Kenya Shillings 10,000,000/=

Liabilities

Nil

8. Following the demise of the Deceased his widow and sons petitioned the court for Grant of letters of Administration Intestate. The Applicant herein Anthony Mbuthia Kanyiri filed an objection dated April 30, 2012 and a cross-Petition dated November 26, 2013. On April 28, 2015 a Grant was issued to Justina Muringa Kanyiri, Peter Wamae Kanyiri, Micheal Mureithi Kanyiri and Anthony Mbuthia Kanyiri as Co-Administrators of the Estate. The Grant has not yet been confirmed. A summons for confirmation of Grant dated May 4, 2016 was filed in court by the Administrators of the estate but the same is yet to be heard as one of the Administrators Anthony Mbuthia Kanyiri filed a protest dated June 13, 2016 to the confirmation of the Grant.
9. Thereafter the court issued a certificate of partial confirmation of Grant dated November 20, 2019 under the terms of which the widow Justina Muringa Kanyiri (now Deceased) was to hold the estate properties as trustee for all the beneficiaries. (See Annexure 'AMK-2' to the summons dated November 20, 2019)
10. The Applicant who is one of the Administrators of the estate then filed this present summons seeking various orders. The Applicant avers that the two (2) properties known as NAIROBI BLOCK 136/7843 and NAIROBI BLOCK 136/7840 (hereinafter jointly referred to as 'the suit properties') belong to the Deceased and therefore form part of his estate.
11. The Applicant alleges that the Respondent who is also an Administrator of the estate of the Deceased has acquired from Embakasi Ranching Company Limited a certificate of lease allocating the two suit



- properties into his own name. That the Respondent has been intermeddling in the estate and ought to be restrained from any further intermeddling with the estate.
12. The Applicant further alleges that the Respondent is not a fit person to administer the estate of the Deceased and prays that the Grant issued to the Respondent be revoked.
  13. As stated earlier the Respondent Micheal Mureithi Wamae opposed the summons. The Respondent insisted that the suit properties have never been listed as assets of this estate and asserts that the two suit properties do not form part of the estate of the Deceased. The Respondent further asserts that no asset belonging to the estate has been transferred into his name.
  14. The Respondent states that he has diligently administered the estate of the Deceased in accordance with the law. He accuses the Applicant of seeking to embarrass the Respondent through the filing of this present application and prays that the same be dismissed in its entirety.

### **Analysis and Determination**

15. I have carefully considered the application before this court, the Reply filed thereto as well as the written submissions filed by both parties. The issues which arise for determination are:
  - (i) Whether NAIROBI BLOCK 136/7843 and NAIROBI BLOCK 136/7840 form part of the estate of the Deceased.
  - (ii) Whether injunctive orders ought to issue to prevent intermeddling in the estate by the Respondent.
  - (iii) Whether the Respondent should be removed as Administrator of the estate of the Deceased.
16. The parties both agree that the Deceased owned two (2) plots of land measuring one-quarter (1/4) acre each at Ruai. However, in the Affidavit in support of the Petition for Grant of letters of Administration Intestate dated December 1, 2011 what has been listed as assets belonging to the estate are '2 1/4 acre in Ruai'. The plots in question have not been identified by the land Reference Numbers.
17. Similarly, the suit properties have not been specifically listed in the certificate of partial confirmation of Grant dated November 20, 2019. What is listed therein is '1 plot in the Ruai'
18. It is manifest that the Deceased had a share in the Embakasi Ranching Company Limited vide a certificate No 10857 issued in the name of the Deceased (Annexure 'AMK 3'). The share certificate was issued in the name of Francis Kanyiri Wamae (the Deceased herein).
19. Vide a letter dated December 23, 2008 it was confirmed that the Deceased was the bona fide owner of Plot No P1340 situated in Ruai Farm, Embakasi Division.
20. It is not entirely clear whether the two (2) plots of ¼ acre each in Ruai are the same parcels of land as the two suit properties. The Applicant has not annexed any documentation to show that LR No NAIROBI BLOCK 136/7843 and NAIROBI BLOCK 136/7840 were ever registered in the name of the Deceased. What is manifestly clear is that the suit property LR No NAIROBI BLOCK 136/7843 and NAIROBI BLOCK 136/7840 are both now registered in the name of the Respondent Micheal Mureithi Wamae as evidenced by the official searches annexed to the Applicants supporting Affidavit (Annexure 'AMK 5')
21. The Applicant claims that the suit properties actually belong to the estate and were fraudulently transferred into the name of the Respondent. The Applicant alleges that the Respondent caused the Deceased share in Embakasi Ranching Company Limited to be transferred to himself and thereafter had the plot in Ruai registered in his (the Respondent) name. Those are serious allegations which



- cannot be determined by way of Affidavit evidence. The court would require to hear substantive evidence on the said allegations before a decision on the status of the suit properties can be made.
22. As things stand it has not been proved that the properties known as LR No NAIROBI BLOCK 136/7843 and NAIROBI BLOCK 136/7840 do in fact form part of the estate of the Deceased. Therefore prayer 3 of this summons seeking to have the suit properties revert to the estate of the Deceased cannot at this point be granted.
  23. Moreover, under Section 13 of the Environment and Land Act, the Environment and Land Court (ELC) is the only court mandated to determine questions of ownership use and occupation of land. Therefore if the Applicant as an Administrator of the estate claims the suit properties for the estate of the Deceased, then that is a claim which properly ought to be filed in the ELC Court not in this Probate Court.
  24. The Applicant has prayed to have the Respondent who is his Co-Administrator removed as an Administrator. He claims that the Respondent has been intermeddling with the estate of the Deceased.
  25. Firstly, the Grant was issued to all four administrators jointly not individually. Therefore, the procedure would be to apply to have the Grant issued to all four revoked and then reissued to only three Administrators.
  26. The grounds upon which a Grant may be revoked are set out in Section 76 of the *Law of Succession Act* Cap 160, Laws of Kenya. The Appellant has not proved any of the grounds as against the Respondent.
  27. On the allegation that the Respondent has been intermeddling with the estate again I find that no specific acts of intermeddling have been proved against the Respondent.
  28. All in all I find no merit in this summons. It is my view that many of the prayers sought therein can only be determined after a full hearing at which parties will be at liberty to call witnesses who will be cross-examined by the opposite parties.
  29. Having said that this Court is sitting as a Probate Court whose mandate is to supervise the distribution of the estate to the genuine beneficiaries. The court has the mandate to make such orders as may be necessary to protect /preserve the estate pending final distribution.
  30. Section 47 of the *Law of Succession Act* vests court with wide discretion in granting protective powers of purposes of safeguarding the estate of a deceased person. It provides:

' The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.'
  31. Likewise, Rule 73 of the *Probate and Administration Rules* provides that:-

' Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.'
  32. I find that it is in the interest of the estate to ensure that all the estate assets are preserved pending the confirmation of the Grant. I therefore grant a temporary injunction to restrain any of the Administrators from intermeddling with the property of the estate.
  33. Finally, this court now makes the follows orders:-



- (1) Prayers (3) and (5) of the summons dated October 14, 2022 are hereby dismissed.
- (2) An order of temporary injunction be and is hereby issued restraining Micheal Mureithi Wamae, Anthony Mbuthia Kanyiri, and Peter Wamae Kanyiri either jointly or individually from alienating disposing, transferring, leasing, or in any other manner whatsoever interfering with the any of the assets forming part of the estate of the Deceased pending the confirmation of the Grant.
- (3) This being a family matter each side shall bear its own costs.

**DATED IN NAIROBI THIS 21<sup>ST</sup> DAY OF JULY, 2023.**

.....

**MAUREEN A. ODERO**

**JUDGE**

