



**In re Estate of Wang'ombe Wachiuri alias Wang'ombe s/o Wachiuri (Deceased)
(Succession Appeal E016 of 2021) [2023] KEHC 19861 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19861 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION APPEAL E016 OF 2021**

FN MUCHEMI, J

JULY 6, 2023

**IN THE MATTER OF THE ESTATE OF WANG'OMBE
WACHIURI ALIAS WANG'OMBE S/O WACHIURI (DECEASED)**

BETWEEN

JAMES MURIUKI WANG'OMBE 1ST APPELLANT

SHELMITH WANJA WANG'OMBE 2ND APPELLANT

JACKLINE NYACHIHI WANG'OMBE 3RD APPELLANT

AND

WILLIAM WACHIURI WANG'OMBE 1ST RESPONDENT

PETERSON KAHARIRI WANG'OMBE 2ND RESPONDENT

DAVID WACHIRA WANG'OMBE 3RD RESPONDENT

CAROLINE MUTHONI WANG'OMBE 4TH RESPONDENT

RULING

Brief facts

1. This application dated 9th November 2022 brought under Rule 49 and 73 of the Probate & Administration Rules, seeks for orders that an inhibition order be issued against the respondents from interfering or transferring the suit property land parcel number Kirimukuyu/Gachuiro/419 pending the hearing and determination of the appeal.
2. The respondents opposed the application and filed a replying affidavit dated 2nd December 2022.



The Applicants' case

3. The applicants deposes that a ruling in Nyeri CM Succession Cause No. 211 of 1989 was delivered on 20th May 2021 and that being dissatisfied with it, they filed an appeal on 18th June 2021.
4. The applicants state that the respondents have been issued with consent to subdivided the property Kirimukuyu/Gachuiro/419 and they are apprehensive that at any time the respondents shall be issued with a title deed pursuant to the certificate of confirmation of grant issued on 8th October 2020.

The Respondents' Case

5. The respondents state that prior to the confirmation of grant on 27th February 1992, all the beneficiaries consented on the proposed mode of distribution apart from the 1st appellant who was given an opportunity to file his protest to the mode of distribution but failed to comply thus necessitating the confirmation of the grant.
6. The respondents further state that 28 years later after confirmation of the grant, the 1st appellant filed for revocation of the grant and prayed that each beneficiary gets an equal share from the estate. The issue was extensively dealt with whereby evidence was adduced and clan minutes presented before the court indicating that the 1st appellant had inherited the deceased's share in Ruguru/Karuthi/2024 and that is why he did not get an equal share to the rest in land parcel number Kirimukuyu/Gachuiro/419.
7. The respondents further state that initially the 4th respondent was left out of the succession process and by summons for confirmation of grant dated 4th September 2020 she was catered for and by consent by all the parties, the grant was confirmed on 8th October 2020. Subsequently after, the respondents state that they filed summons dated 28th June 2021 seeking for orders that the executive officer sign the transmission documents on behalf of the applicants who had at the time refused to execute the same. The application was allowed and the documents were executed accordingly.
8. The respondents further state that upon execution of the documents by the executive officer, they requested the district surveyor to assist with the portioning of the land and they were then served with an inhibition order.
9. The respondents aver that the appeal is not an arguable appeal and that the instant application is an abuse of the court process as the applicants were actively involved in the succession process and more so they were all represented by legal counsel.
10. Parties disposed of the application by way of written submissions. The applicants failed to put in written submissions despite being granted 7 days to do so on 12th June 2023.

The Respondents' Submissions

11. The respondents reiterate what they deposed in their affidavit and submit that the applicants have not satisfied the threshold set out in Order 42 Rule 6 of the Civil Procedure Rules and the cases of Antione Ndiaye vs African Virtual University (2015) eKLR; Butt vs Rent Restriction Tribunal (1982) KLR and Machira t/a Machirah & Co. Advocates vs East African Standard (2002) KLR 63 to warrant them stay of execution pending appeal. The respondents argue that the applicants were actively present throughout the succession cause in the trial court and they signed a consent to the mode of distribution. Moreover, for those that refused to sign, the respondents argue that they were represented by their advocates who under their instructions duly recorded a consent and thus they cannot turn back and argue to the contrary.



12. The respondents further submit that the succession cause was filed in the year 1989 and thus there is an urgent need to effectuate the confirmed grant failure to which the estate shall slowly go to waste and shall not be of much help to the beneficiaries. Moreover, the respondents argue that it is worrying that since the filing of the appeal, the applicants have never bothered to file a record of appeal despite the proceedings having been typed a long time ago.
13. The respondents submit that the application ought to be dismissed as the issues raised as well as the grounds of appeal are not arguable as they were extensively dealt with and consents voluntarily executed by both parties.

The Law

Whether the applicants have satisfied the conditions for the grant of the order of inhibition.

14. Section 68(1) of the [Land Registration Act](#) provides:-

The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.

A copy of the inhibition under the seal of the court with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in appropriate register.

15. These provisions give court discretion to issue orders which are in the nature of injunction restraining the dealings on land pending further orders by the court. The section is meant to preserve the property from acts that would otherwise render a court order incapable of being executed and or to give an opportunity to hear and decide the matter. In *Re Estate of Elijah Ngari (Deceased)* [2019] eKLR.
16. In *Mwambeja Ranching Company Limited & Another vs Kenya National Capital Corporation Limited (Kenya) & 6 Others* [2015] eKLR Gikonyo J, held the view that orders of inhibition envisaged under section 68 of the Registration of [Land Act](#) are in the nature of prohibitory injunction and act to preserve the suit property just as an interlocutory injunction would do. He stated:-

“Of great significance on the request for an order of inhibition is section 68(1) of the [Land Registration Act](#) which reads as follows; the court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge. The case of *Japhet Kaimenyi M’ndatho vs M’ndatho M’mbwiria* [2012]eKLR dealt with the threshold for granting orders of inhibition in a pointed manner as follows; “In an application for orders of inhibition, in my understanding, the applicant has to satisfy the following conditions:-

- a. That the suit property is at risk of being disposed of or alienated or transferred to the detriment of the applicant unless preservative orders of inhibition are issued.
- b. That the refusal to grant orders of inhibition would render the applicant’s suit nugatory.
- c. That the applicant has arguable case.”



17. Okwengu, J (as she then was) in the case of Philip Mwangi Githinji vs Grace Wakarima Githinji (2004) eKLR rendered herself inter alia;
- “An order of inhibition issued under section 128 of the Registered [Land Act](#) is akin to an order of prohibitory injunction for it restricts the registered owner and any other person from having their transaction regarding the land in question registered against the title. Before the court can issue such an order it must be satisfied that the person moving the court for such orders has good grounds for requesting such an inhibition, such grounds would normally be in the form of a sustainable claim over the suit land.”
18. The court record shows that this succession cause was filed in 1989 which is about 34 years ago and is still in the court shelves. A grant for letters intestate was issued on 28/9/1990 and since parties were not agreeable to the mode of distribution, the court directed that any party was at liberty to file a protest. On 24th February 1992, the grant was confirmed without any objection. The court distributed land parcel number Kirimukuyu/Gachuiro/419 as follows:-
- a. William Wachira Wang’ombe – 3 acres
 - b. Peter Kahariri Wang’ombe – 2.5 acres
 - c. James Muriuki Wang’ombe – 1.2 acres
 - d. David Wachira Wang’ombe – 2.5 acres
 - e. Shelmith Wanja & Jackline Nyachichi Wang’ombe – 1 acre
19. The 1st applicant herein thereafter filed summons for revocation of grant dated 1st August 2019 seeking revocation of the rectified certificate of confirmation of grant dated 11th June 2019 on the grounds of concealment of material facts. The summons proceeded by way of viva voce evidence and the court delivered its ruling on 6th February 2020 dismissing the said summons for lack of merit.
20. It is noted from the record that the parties herein were represented by advocates in Nyeri CM Succession Cause No. 211 of 1989 except the 4th respondent. However, the 4th respondent was considered for a share equal to those of her sisters out of L.R. Kirimukuyu/Gachuiro/419. The distribution in the said cause was done by consent of the parties. The 1st Applicant was given a chance to file a protest which he failed to do.
21. This application for seeking for orders of inhibition brought three (3) years after the estate was distributed is not in good faith. It seeks for an order to have the officer commanding police station to enforce the order. It is noted that the Succession Cause is over and the 3 appellants have appealed against the ruling of Hon. Nelly Kariuki Principal Magistrate delivered on 20/05/2021. I believe the applicants only need orders for stay of execution pending appeal in the event that they are found to be deserving. The prayers for inhibition and police involvement are in my view misplaced in this appeal. The delay in bringing this application has not been explained which is a requirement. The application is brought under Rule 49 and 73 of the Probate and Administration Rules which empower this court to grant any orders in the interests of justice.
22. The applicant states that the respondents have started to alienate the suit land. Although, the applicants did not expressly say that their appeal will be rendered nugatory, it appears, that is what they intended to say. However, considering that the main prayer is for inhibition and that the applicants have not passed the test of demonstrating sound grounds in form of a sustainable or arguable appeal, I am of the considered view that this application cannot succeed.



23. I find this application unmerited and dismiss it with no order as to costs.

24. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 6TH DAY OF JULY, 2023.

F. MUCHEMI

JUDGE

Ruling delivered through video link this 6th day of July 2023

