



**Kibanga v Kibanga; Kibanga & another (Respondent); Mwangi & 2 others (Administrator); Mburugu (Applicant) (Succession Cause 4 of 1986) [2023] KEHC 20216 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20216 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 4 OF 1986  
EM MURIITHI, J  
JULY 13, 2023**

**BETWEEN**

**JOSEPH MUTEKI KIBANGA ..... PETITIONER**

**AND**

**EUNICE IGOKI KIBANGA ..... OBJECTOR**

**AND**

**JOSPHINE IGOKI KIBANGA ..... RESPONDENT**

**LEONARD MUTHEE ..... RESPONDENT**

**AND**

**JANE KAIMURI MWANGI ..... ADMINISTRATOR**

**JOYCE TIRINDI KIBANGA ..... ADMINISTRATOR**

**REBECCA GACHOGA MUTEKI ..... ADMINISTRATOR**

**AND**

**IMELDA KARENDI MBURUGU ..... APPLICANT**

**RULING**

1. By Summons dated January 18, 2023, the applicant seeks that:
  1. The 1<sup>st</sup> and 2<sup>nd</sup> respondents/administrators herein, Jane Kaimuri Mwangi, Joyce Tirindi Kibanga, do pay to the applicant Ksh 367,500/= being her 1/3 share of rent collected from L R Meru Municipality Block 11/30 for the period January, 2020 to December, 2020.



2. The respondents/administrators herein do pay interest on the same amount at the rate of 18% from the date payment fell due to the date of full payment
  3. The respondents/administrators do pay the costs of these proceedings.
2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of Imelda Karende Mburugu, the applicant herein, sworn on even date. She avers that the estate herein relates to her father and the administrators are her sisters. Part of the estate of the deceased comprised of L.R Meru Municipality Block 11/30 which is a commercial plot rented out and generating income. On April 9, 2019, the parties herein entered into a consent where the 1<sup>st</sup> and 2<sup>nd</sup> administrators agreed to pay her Ksh 8,000,000 as her  $\frac{1}{3}$  share of the property. The payment of the said sum was to be completed by January 30, 2020 where interest in the property would cease. Even after the court's ruling of September 24, 2020 enforcing the consent, the said sum was not fully paid until January 28, 2021 when the final sum of Ksh 196,667 was paid. The 1<sup>st</sup> and 2<sup>nd</sup> administrators started collecting rent from the property from January, 2020 to December, 2020, and the tenants in occupation at that time used to pay rent quarterly totaling to Ksh 1,102,500. Out of the total rent collected, she is entitled to  $\frac{1}{3}$  thereof, which amounts to Ksh 367,500 together with interest at the rate of 18% per annum.
  3. The 1<sup>st</sup> administrator, Jane Kaimuri Mwangi, opposed the application vide her replying affidavit sworn on April 18, 2023. She avers that the consent of April 9, 2019 was explicit and it effectively divested the applicant of her  $\frac{1}{3}$  share of the plot, and as ruled by the court on September 24, 2020, the applicant's only entitlement was the purchase price. The ownership of the plot comes with the rent payable and the applicant cannot claim an entitlement to the rent thereof merely because there was a delay in remittance of the balance of the purchase price. The applicant cannot also claim interest on the purported unpaid rent, because the entire consideration of Ksh 8,000,000 was paid. She urges the court to dismiss the summons with costs for being misconceived.

### **Submissions**

4. The applicant accuses the 1<sup>st</sup> and 2<sup>nd</sup> administrators of collecting rent but failing to remit to her, her rightful share. She urges that the consent of December 5, 2019 was binding to all the parties herein, and she was entitled to receive her share of the rent until the purchase price of Ksh 8,000,000 was cleared in full, and cites *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another* (2001) eKLR. She urges that the 1<sup>st</sup> and 2<sup>nd</sup> administrators are in breach of the court orders by failing to pay her, her share of the rent, and prays for the application to be allowed.
5. The 1<sup>st</sup> and 2<sup>nd</sup> administrators urge that the applicant sold to them her  $\frac{1}{3}$  share of the plot and her only entitlement would be the consideration thereof but she cannot claim any rent or interest over the same. They urge the court to dismiss the summons with costs for being misconceived and non-suited.

### **Determination**

6. According to the consent of April 9, 2019, the 1<sup>st</sup> and 2<sup>nd</sup> administrators were supposed to pay the applicant the sum of Ksh 8,000,000 as follows: "1. Kshs 3,250,000 on or before May 15, 2019 2. Kshs 3,250,000 on or before November 15, 2019 3. The balance of Kshs 1,500,000 on or before January 30, 2020."



7. When the 1<sup>st</sup> and 2<sup>nd</sup> administrators failed to comply with the terms of the said consent, the applicant moved the court for enforcement, and the court vide its ruling of September 24, 2020 ordered that:
- “ a) The amount of Kshs 796,667/-, being the balance of Kshs 8,000,000/- be paid to Imelda by the administrators (or the administrator who has not completed her share thereof) within 90 days from the date hereof.
  - b) Failure to comply with (a) above, the amount shall begin to accrue interest at court rate from the date of default until payment thereof and execution thereof to issue.
  - c) Imelda shall relinquish collection of rent from the said property upon payment of the amount in (a), or after 90 days from the date of this ruling, whichever is earlier.
  - d) There shall be no orders as to costs.”
8. The final installment as per the consent was supposed to be paid on or before January 30, 2020, which was not done. On September 24, 2020, the court directed that the outstanding balance of Ksh 796,667 be paid within 90 days from the date of the ruling, failure to which the amount would begin to accrue interest at court rates from the date of default until payment in full. The court had further directed that the applicant would relinquish collection of rent from the plot upon payment of the outstanding balance or after 90 days from the date of the ruling, whichever was earlier.
9. The record is clear that the final payment of Ksh 196, 667 was made to the applicant on January 28, 2021, long after the 90 days period granted by the court had lapsed, one year from January 30, 2020 last day of payment under the Consent.
10. This court finds that the applicant is entitled to rent for the period between January, 2020 to December 2020, as claimed in her application.

### **Orders**

11. Accordingly, for the reasons set out above, this court finds that the application dated January 18, 2023 is merited and it is allowed in the following terms:
- 1. The 1<sup>st</sup> and 2<sup>nd</sup> administrators do pay to the applicant Ksh 367,500/= being her  $\frac{1}{3}$  share of rent collected from L R Meru Municipality Block 11/30 for the period between January, 2020 to December, 2020 together with interest at court rates from the date payment fell due until payment in full.
  - 2. The applicant shall have costs of the application.

Order accordingly.

**DATED AND DELIVERED THIS 13<sup>TH</sup> DAY OF JULY, 2023.**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES**

**M/S. KIUTHA ARITHI ADVOCATE FOR THE RESPONDENTS.**

**MR. G. MWITI FOR MR. MWENDA FOR APPLICANT.**

