



**In re Estate of Stephen Nyongo Mutinda (Deceased) (Succession Cause  
1047 of 1987) [2023] KEHC 24887 (KLR) (Family) (6 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24887 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 1047 OF 1987  
PM NYAUNDI, J  
OCTOBER 6, 2023  
IN THE MATTER OF THE ESTATE OF STEPHEN NYONGO MUTINDA (DECEASED)**

**BETWEEN**

**EUNICE THAMA NYONGO ..... APPLICANT**

**AND**

**SAMUEL KAGICA NYONGO ..... 1<sup>ST</sup> RESPONDENT**

**MONICA MURUGI NYONGO ..... 2<sup>ND</sup> RESPONDENT**

**HANA WANJIRU NYONGO ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Application for determination is dated 10<sup>th</sup> February 2023 and is presented under Article 159 of the [Constitution](#), Sections 1A, 1B, 3A and 63 of the [Civil Procedure Act](#), Order 40 Rules 1 & 4 and Order 51 Rule 1 of the [Civil Procedure Rules](#). The Applicant seeks the following orders-
  - a. Spent
  - b. Spent
  - c. That the Court be pleased to order that the Respondents execute all the necessary transfer documents relating to the Parcel No. Thika Municipality Block 21/ 2099 in favour of the Applicant, Eunice Thama Nyongo
  - d. That the Court orders that the Respondents being Administrators of the Estate of the deceased render a detailed account of the Estate as per the Certificate of Confirmation of Grant dated 27<sup>th</sup> June, 2006



- e. That this Honourable Court be pleased to make such further orders as are necessary for the ends of Justice
- f. That the Costs of the Application be provided for
2. The Application is supported by the Affidavit of the Applicant sworn on the 10<sup>th</sup> February 2023. She is the daughter of the deceased. Her mother was the 1<sup>st</sup> wife of the deceased. She contends that the Administrators of the estate have failed to transfer properties to each house as per the certificate of the Confirmation of Grant dated 27<sup>th</sup> June 2006
3. She particularly takes issue that the respondents intend to dispose of property referred to as Land Parcel No. Thika Municipality Block 21/ 2099 which she avers she has been in possession of since 2009. She avers that the Administrators have identified a buyer and have applied for land control board consent. She submits that unless the Respondents are restrained she will be disinherited and be exposed to untold loss and suffering.
4. Apart from the property cited in paragraph 5 above, the Respondents have failed in their duty to administer the Estate of the deceased and in particular failed to have the commercial properties namely Plot No. 163 Ruiru Town (Gachiengu), Mombasa LR No. XVII/257 (Top Safety) and Mombasa Plot No. XV11/122 (Visitors Inn) registered in the names of all the homes.
5. She urges that owing to the indolence of the Administrators in finalizing the administration of the estate they should be compelled to render an account of the Estate as per the certificate of confirmation of grant.
6. The Application is opposed by affidavit sworn by the 2<sup>nd</sup> Respondent sworn on the 15<sup>th</sup> Day of April 2023. It is contended that the Applicant has obtained her share of the estate that was come directly to her.
7. That the delay in finalizing the administration of the estate has been occasioned in part by the death of Administrators. The 3<sup>rd</sup> Administrator is deceased and the members of her house are yet to nominate her replacement.
8. The Respondents contend that they have made progress in administering the estate and that the only remaining assets are
  - a. Longonot 25 shares
  - b. Mombasa (Msambweni Development Ltd)
  - c. Gatuanya (Gatundu Ranching) also known as LR Thika/ Municipality Block 21/ 2099 Which they are in the process of obtaining titles
9. It is also contended that the following consent by the beneficiaries the family established Nyongo Mutinda Self Help Group which manages 3 properties. 2 in Mombasa and one in Ruiru. That these assets are managed by a caretaker and real estate agent and that the beneficiaries, including the Applicant get an equal share of the profits via Mpesa.
10. It is stated that the parcel of land LR Thika Municipality Block 21/ 2099 is one of the 3 parcels of land allocated to the estate by the land buying company Gatundu Ranching.
11. It is submitted that each of the 3 parcels will be shared among the 3 homes. It is alleged that by fencing and building a structure on the parcel of land the Applicant is in fact intermeddling.



12. The parties agreed to canvass the Application by way of written submissions. The Applicants submissions are dated 17<sup>th</sup> July 2023. At the time the Court retired to write this ruling the Respondents had not filed their submissions, as none were on the Court file or on the Portal. In writing the ruling therefore the Court relied on the Replying Affidavit of the Respondents, noting that this was an old matter and therefore in the interests of justice should be determined expeditiously.

### **Summary of the Applicant's Submissions**

13. The Applicant has framed the following as the issues that are for determination
- a. Whether the Applicant has proven her case to be granted an injunction
  - b. Whether the Administrators have fulfilled their obligations and successfully administered the deceased estate and whether the administrators should be ordered to render an account of the estate.
14. It is submitted that the Applicant has been in possession of LR Thika Municipality Block 21/ 2009 and that since the explanation tendered by the Respondent does not respond to the claim by the Applicant that they intend to dispose of the property, the Court should grant an injunction pending them giving a statement of account of the Estate.
- In so doing the Applicant relies on the decision in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358
15. The Applicant submit that the responses tendered by the respondents fall short of the report that an Administrator is required to make under Section 83 of the *Law of Succession Act*.
16. The Applicant relies on the decision of Musyoka J in *Re Estate of Julius Mimnao (Deceased)* [2019] eKLR and *Re Estate of Sarastino M'achabari M'Ukabi (Deceased)* [2021] eKLR on the fiduciary duty of the Administrators towards the Beneficiaries and the mandate of the Court to require that Administrators to furnish statements when they fail to do so on their own.

### **Analysis and Determination.**

17. Having reviewed the pleadings filed herein, the submissions and the relevant law, I discern the following as the issues for determination.
- a. Whether an injunction should issue as prayed
  - b. Whether the Respondents should execute all the necessary transfer documents relating to the Parcel No. Thika Municipality Block 21/ 2099 in favour of the Applicant, Eunice Thama Nyongo
  - c. Whether the Respondents should render a detailed statement of accounts
  - d. Who should bear the costs of this Application
18. On the first issue; it is alleged that the Applicant is poised to dispose of the subject parcel of land Parcel No. Thika Municipality Block 21/ 2099 to a 3<sup>rd</sup> Party and has lodged an application for Land Control Board Consent. Apart from this averment, no evidence has been placed before the Court to substantiate this claim.



19. Guided by the decision of the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR in which the Court reiterated the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent and stated thus

It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. See *Kenya Commercial Finance Co. Ltd v Afraba Education Society* [2001] Vol. 1 EA 86. If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between. (Emphasis Supplied)

20. I find that the Applicant herein has not established that she has a prima facie case and specifically she has not demonstrated that the land is at risk of disposal as alleged. I also note that it is in her submissions that she seeks an injunction pending the rendering of accounts, whereas on the body of the Application she seeks the stay pending the hearing and determination of this Application.
21. It is a well-established principle that parties are bound by their pleadings. The said principle was asserted by Aburili J in the case of *Livestock Research Organization v Okoko & another* (Civil Appeal 36 A of 2021) [2022] KEHC 3302 (KLR) (29 June 2022) where she stated
- (22) The general rule is that courts should determine a case on the issues that flow from the pleadings and therefore a court may only pronounce judgement on the issues arising from the pleadings or such issue as the parties have framed for the court's determination and therefore it is also a principle of law that parties are generally confined to their pleadings unless pleadings are amended during the hearing of a case. See *Galaxy Paints Co. Ltd v Falcon Guards Ltd* [2000] 2 EA 385 and *Standard Chartered Bank Kenya Limited v Intercom Services Limited & 4 Others Civil Appeal No. 37 of 2003* [2004] 2 KLR 183.
22. I therefore decline the prayer for an injunction to issue pending the rendering of accounts.
23. On the second issue, where the Applicant seeks that the Respondents be compelled to execute all the necessary transfer documents relating to the Parcel No. Thika Municipality Block 21/ 2099 in her favour, I have considered Certificate of Confirmation of Grant issued on 27<sup>th</sup> June 2006 and observe that the Court determined that each House of the deceased to be allocated 25 shares at Gatunyanga.
24. From the reply affidavit, it is suggested that this property is one of the 3 parcels that the estate has from the land buying company. It follows therefore that the asset is available but for distribution either between the 1<sup>st</sup> family or all the beneficiaries of the deceased (i.e. the 3 Houses), both the Applicant and the respondent have rival positions on this issue.
25. What is clear therefore is that the interest of the Applicant has not crystallised to entitle her to the orders sought. I therefore also dismiss this limb of the Application.
26. On the 3<sup>rd</sup> issue, on whether the Administrators should render a detailed statement of accounts. The Applicant contends that there has been delay in finalizing the administration of the estate, that beneficiaries are not getting their entitlement in terms of the Confirmed Grant and that the



Respondents are intermeddling in the estate by disposing of the assets of the estate unilaterally and to the detriment of the Respondent's interests.

27. I note that the Certificate of Grant was issued herein on 27<sup>th</sup> June 2006. Section 83 (g) of the *Law of Succession Act* provides that a personal representative shall;

Within six months from the date of the confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.

28. It is evident from that provision that Administrators are required to move with diligence and expedite the completion of the administration of the estate. In the instant case, 17 years down the line, the Administrators are yet to finalise administration, this is to the disadvantage of the beneficiaries.

29. I have considered the Replying affidavit filed herein and the status report given by the Respondents but find it does not meet the threshold set out under Section 83 of the *Law of Succession Act*.

30. In circumstances such as these the Court is required to invoke its inherent jurisdiction under Section 47 of the *Act* and make orders that safeguard the estate. Accordingly, I make the following orders

- a) The Notice of Motion dated 10<sup>th</sup> February 2023 partially succeeds and the Respondents are directed to file within 45 days a full and accurate inventory of the assets and liabilities of the estate and an account of their handling of the estate of the deceased in keeping with Section 83 of the *Law of Succession Act*.
- b) The matter will be mentioned on 6<sup>th</sup> December 2023 to confirm compliance and take directions.
- c) Each party to bear their own costs

It is so ordered

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 6<sup>TH</sup> DAY OF OCTOBER, 2023.**

**P NYAUNDI**

**JUDGE**

**In the presence;**

Sylvia Court Assistant

