



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MAKUENI
P&A NO. 33 OF 2017

IN THE MATTER OF THE ESTATE OF THE LATE LAZARO
MULEI KYAI (DECEASED)

DR. MARIA NDUKU MULLEI APPLICANT

VERSUS

MUTUNGA KIILU,..... RESPONDENT

RULING

1. What is before me is the ex parte summons dated 16/5/2025 brought under Article 159(2)(d) of the Constitution, section 47 of the Law of Succession Act, Rule 73 of the P& A Rules, the Auctioneer's Act 1996.
2. The applicant seeks the order that warrants to give vacant possession dated 3/12/2018 be re-issued to:

Mambu Auctioneers

T-Ten House, Room No.6

Machakos - Nairobi Road

P O Box 3524 - 90100 Machakos.

3. The application is supported by the affidavit of Dr. Maria Nduku Mullei sworn on 16/5/2025 and the grounds on the face of the application.

4. The said orders were given by Hon. C. Kariuki J on 1/12/2018 following a ruling delivered on 4/10/2018.

5. In those orders :-

Joseph Wambua Kiilu - 2nd Respondent

Mulei Mwangangi - 3rd Respondent

Charity Mativo - 5th Respondent

were permanently enjoined from dealing in any manner whatsoever with plot No. 4236 Mutito Adjudication Section.

The court further issued **“an order of eviction to evict”** the three - 2nd , 3rd and 5th Respondents and **“Any other person from the deceased’s immovable properties known as plot No. 4236 Mutito Adjudication section.”** The OCS Mbooni Police Station was directed to enforce the order.

6. The applicant depones that thereafter the 2nd, 3rd, 5th respondents filed chamber summons dated 10/12/2018

and 11/12/2018 followed by protests dated 20/2/2019 and 23/09/2019.

7. That this court delivered its judgment on the protests on 18/4/2024, and a certificate of confirmation of grant was made on 30/5/2024.
8. The applicant further depones that the orders of 4/10/2018, have never been set aside - and the protests filed thereafter were not allowed - that those orders and that judgement have not been stayed/ set aside, varied or overturned by any court of competent jurisdiction.
9. Mr. Kiluva appeared for the applicant and submitted that the eviction process had started - the respondents sought time to remove their possessions from the property - they proceeded to file their protests, which were declined by the court - Hence there is nothing to stop the said order from being re-issued.
10. Ms Kyalo appeared for the Elizabeth Ndunge Onesmus, one of the protesters - saying that she needed to be heard.
11. Mr. Kiluva responded that the issue of the 5th Respondent was before the ELC Court.

12. The only issue for determination is whether the orders of C. Kariuki J ought to be re-issued.
13. I have carefully considered the application, the grounds, the affidavit in support and the submissions by Mr. Kiluva.
14. The record speaks for itself - the Hon. Justice C. Kariuki issued those eviction orders on 4/10/2018. Those orders provoked the affected parties who proceeded to file applications, protests - which were resolved on 18/4/2024 in favour of the administrators of the estate.
15. The judgement of this court and the eviction orders by C. Kariuki J have never been stayed nor set aside.
16. It appears to me that those orders were issued to preserve the estate of the deceased pending the distribution of the estate as per the Law of Succession Act.
17. I am of the view that the application is meritorious as none of the affected parties has appealed/stayed /set aside orders.
18. In the circumstances the application is allowed.

19. The order of Justice C. Kariuki dated 4/10/2018 be and is hereby re-issued.

20. The 5th Respondent has recourse in the ELC Court.

Orders accordingly.

Dated, signed and delivered this 29th September 2025

Mumbua T Matheka

Judge

CA Chrispol

Mr. Kiluva for Applicant