

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
(CORAM: R. MWONGO, J.)
CIVIL APPEAL NO. E024 OF 2022

IN THE MATTER OF THE ESTATE OF HELENIA SHIUTHARA HALAN (DECEASED)

MARY IGOKI IRERI.....APPLICANT

VERSUS

MARY RWAMBA NYAGA.....1ST RESPONDENT

JOHN MUCHANGI NYAGA.....2ND RESPONDENT

R U L I N G

Summons dated 11th November 2024

1. The applicant filed summons dated 11th November 2024 seeking for orders that:
 - 1) The Land Registrar Embu do register 1 acre of land parcel number Kagaari/Kanja/2885 in the name of Mary Igoki Ileri and the remaining 1 acre in the name of Nyaga Allan (deceased) or alternatively to Mary Rwamba Njagi; and;
 - 2) Costs of this application be provided for.
2. The summons is premised on the grounds that when the court issued the orders initially on 08th May 2024 during distribution of the estate, the same were found to be unclear such that the Land Registrar could not implement them. The applicant deposed that she has been keen to take the necessary steps towards implementation of the distribution ordered, but only a clarification of the Court's order of 8th May, 2024 will enable full implementation.
3. The respondents filed a replying affidavit in opposition of the summons. They stated that they appealed against the decision of the court delivered on 19th December 2022 at the Court of Appeal wherein a determination is yet to be made. However, this court went on to issue orders on 08th May 2024 in disregard of the appeal which has high chances of success. They stated that the order subdividing the said land into 2 portions is illegal and should not have been issued in the first place.

According to them, the distribution was unfair since the lower court had found that the land was to be registered to the 1st respondent alone. This decision of the lower court was overturned on appeal through the judgment of 19th December 2022.

4. Through a further affidavit, the applicant deposed that the purported appeal filed by the respondents does not stand a chance before the Court of Appeal since it contravenes section 50 of the Law of Succession Act conferring finality and as to the extent of appeals in succession cases.

Parties Submissions on the summons

5. The applicant submitted that the orders sought will clarify and enable implementation of orders already issued by this court on 08th May 2024, which orders have not been stayed, set aside or reviewed. She reminded the court that this is a review from the lower court decision in Runyenjes MC Succession Cause no. 137/2012. That the land registrar is not able to implement the order as drawn and that is why the applicant was directed to seek clarification of the same.
6. She stated that even though the land was initially owned by 2 people jointly (the deceased herein and Alan Nyaga (also deceased)), succession in the estate of Alan Nyaga has not been done. It is submitted that this does not affect implementation of the order herein. She stated that the pending Court of Appeal case does not relate to the orders of this court issued on 08th May 2024.
7. The respondents submitted that the court should stay this case because Alan Nyaga (dcd) was just one of the owners of the suit land and succession needs to be conducted for his half of the property before it can be distributed.

Issue for Determination

8. The issue for determination is whether or not the application has merit.

Analysis and Determination

9. The estate of the deceased was distributed through a judgment of the court delivered on 19th December 2022. Through an application dated 06th January 2023, the respondents sought review of the findings of this court on distribution. That review application was determined through a ruling delivered on 12th July 2023 wherein the said application was dismissed. The respondents filed an appeal before the Court of Appeal challenging the decision of this court on review.

10. Meanwhile, the applicant moved this court for orders for implementation of the distribution ordered. Through a ruling delivered on 08th May 2024, the court issued the following orders towards implementation of the certificate of confirmation of grant issued on 19th December 2022:

- “1. The Deputy Registrar of the High Court at Embu to execute all relevant registrable documents on behalf of the 1st respondent, pertaining to distribution of LR Kaagari/Kanja/2885 according to the certificate of confirmation of grant issued on 19th December 2022;***
- 2. The Land Registrar Embu County is hereby ordered to immediately remove the caution that was placed by the 2nd respondent on LR Kaagari/Kanja/2885;***
- 3. The respondents are hereby restrained from placing a caution or any other encumbrance on the property parcel number Kaagari/Kanja/2885;***
- 4. The Land Surveyor Embu County is hereby ordered to visit LR Kaagari/Kanja/2885 and subdivide it equally as per the certificate of confirmation of grant issued on 19th December 2022;***
- 5. The OCS Kianjokoma Police Station is hereby ordered to provide security during subdivision of land parcel number LR Kaagari/Kanja/2885; and***
- 6. There shall be no order as to costs”***

11. Therefore, although the pending matter before the Court of Appeal may have some bearing on the present or previous applications by the applicant, the court has noted that there are no stay of execution orders in place. Nothing stops the court from determining the application herein.

12. It is the applicant's case that the Land Registrar requested for clarified orders to enable him implement the distribution. The estate of the deceased was distributed equally between Mary Ramba Njagi and Mary Igoki Ireri, each of them getting 1 acre. In order for this distribution to be implemented properly, it is prudent that a clear order be made to the Land Registrar for purposes of transfer of titles.

13. The application appeals to the discretion of the court. The court is subject to Article 165 of the Constitution which gives power to this court to adjudicate the matter at

hand including the option to exercise its vast discretion. Further, Section 47 of the Law of succession act states:

“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: Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.”

14. Rule 73 of Probate and Administration Rules states:

“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.”

Disposition

15. In my view, the application has merit and it should be allowed. Accordingly, I order as follows:

- 1) In accordance with the certificate of confirmation of grant issued on 19th December 2022, and further to this court's orders issued on 08th May 2024, the Land Registrar Embu is ordered to register 1 acre of land parcel number Kagaari/Kanja/2885 in the name of Mary Igoki Ileri and the remaining 1 acre in the name of Mary Rwamba Njagi; and
- 2) There shall be no order as to costs.

16. Orders accordingly.

Delivered, dated and signed at Embu High Court this 15th day of October, 2025.

**R. MWONGO
JUDGE**

Delivered in the presence of:

1. Muchangi for Applicant
2. Mary Rwamba Nyaga - 1st Respondent in person
3. John Muchangi Nyaga - 2nd Respondent in person
4. Francis Munyao - Court Assistant