



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 375 OF 2009
IN THE MATTER OF THE ESTATE OF THE LATE HIRAM
MURURU (DECEASED)

LUCY WANJIKU CHEGE)

KEVIN KARAGU CHEGE)
APPLICANTS

VERSES

TABITHA WAKIYA KABUTHIA
RESPONDENT

RULING

1. By her application dated 3rd February 2022 the Applicants seek the following orders:
 - (a) **The Respondent do deposit the original certificate of lease issued on 18th August 2009 in respect of property known as Ruiru/Kiu/Block 3/1314 with the Deputy Registrar Family Division Nairobi within seven days.**
 - (b) **That failure to comply the Respondent be found guilty of intermeddling with the state of the deceased and liable to a fine of Kenya shillings ten thousand or a term of imprisonment not exceeding one year or both.**

(c) This honorable court do order that the Deputy Registrar Family division Nairobi to execute all the necessary documents in order to facilitate the sale and transfer of title number Ruiru/Kiu Block 3/1314 to the successful purchaser as shall be advised by the Applicants.

(d) Any other favorable order to enforce and actualize the judgement delivered by Hon Justice Musyoka on 25th September 2015 and also the consent order to sell the house situate at LR NO Ruiru/Kiu/Block 3/1314 as was given by Hon Lady Justice R.E. OUGO on 19th September 2016.

(e) Costs to the Respondent.

2. The application is based on the grounds thereof as well as the affidavit in support sworn on even date and a further affidavit sworn on 1st September 2022.
3. The Respondent has opposed the application vide her replying affidavit dated 21st February 2022.
4. The court directed the parties to file written submissions which they have complied.
5. The issue herein is simple, clear and straight forward.
6. Vide the ruling of Musyoka J dated 25th August 2015 he found that the suit property ought to be sold and the proceeds be shared out ***between “Lucy Wanjiku Chege, Tabitha Wakiyu Kabuthia, Kevin Karagu Chege, Anthony Maina Chege and Kevin Karagu Chege.”***

7. There was no appeal or review against the above ruling.
8. It is also on record that the parties on 5th October 2016 in furtherance of Judge Musyoka's orders entered into a consent on the manner the proceeds ought to be deposited and distributed.
9. The said consent is still subsisting to date.
10. From that date it appears from the affidavit of the applicant that a buyer was identified and efforts to conclude the sale were thwarted by the Respondent.
11. The Respondent on her part has exonerated herself and argued among others that she was not happy with the terms of the sale. She even deponed that there was a problem with the title deed which according to her has never been resolved.
12. At the same time the Respondent in opposition to the application deponed that it was the Applicant who has failed to remove the caution placed on the register.
13. I have perused the pleadings, the submissions on board, the cited authorities and in my view the reasons for the long delay have been caused by the Respondent's action of placing roadblocks along the way. This is exemplified by multiplicity of applications including one before the ELC SUIT NO. 203 of 2019 which was dismissed in view of the ruling by Musyoka J.
15. Honorable Lady Justice Kossy Bor in her ruling dated 18th November 2020 agreed with Justice Musyoka in dismissing

the Respondent's suit. She found that the same was *res judicata*.

16. There is therefore no reason why the sale cannot proceed. There is on record a sale agreement already and I find the reasons given by the Respondent too pedestrian in the circumstances and only meant to frustrate the conclusion of the matter. If there is any due diligence which ought to be conducted then it is the business of her lawyers or for that matter the purchasers' advocates.
17. If she intended to frustrate then she ought to have challenged Judges Musyoka's and K. Bors rulings by way of appeal or review.
18. In the premises I shall not dwell on the factual and long legal arguments raised in the affidavits and submissions. Neither is the court sitting as an appellate court on the earlier rulings stated above.
19. The parties must conclude the matter. The caution placed on the register must be removed by the Applicant to allow would be purchasers to find the same unencumbered in the event of any search.
20. Since the Respondent has gone on the path of frustrating the sale, I shall bring in the Deputy Registrar of this court to sign any documents of conveyancing in the event that the Respondent persists in frustrating the sale.
21. **It is therefore ordered that:-**
 - (a) **The Respondent shall within seven (7) days from the date herein deposit with the Deputy**

Registrar of this court original title for land parcel number Ruiru/Kiu Block 3/1314 and in default she shall be in contempt and shall be arrested and forthwith brought before this court for further sanctions.

(b) The Deputy Registrar of this court shall be at liberty to execute the transfer documents in the event that either of the parties does not execute their part within 7 days of such refusal.

(c) The parties should forthwith proceed to execute Judge Musyoka's ruling dated 25th August 2015 as well as the

consent order dated 5th October 2016.

(d) Costs of this application to the Applicants.

**Dated signed and delivered at Nairobi vide video link
this 9th day of October 2025.**

**H K CHEMITEI
JUDGE**