

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
HCCR MISC. NO. E021 OF 2025

KENNETH THURANIRA CHOKERA.....
APPLICANT

VERSUS

REPUBLIC.....
.....RESPONDENT

RULING

1. The matter for determination is the application dated 5th May 2025 in which the Applicant seeks the following orders: -
 - I. Spent.
 - II. **That** pending hearing of prayer No. 3 herein, there be a temporary stay of proceedings in Criminal Case No. E1259 of 2023, Republic Vs Kenneth Thurania Chokera at Tigania Law Courts.
 - III. **That** a permanent order do issue staying the proceedings of Criminal Case No. E1259 of 2023 Republic Vs Kenneth Thurania Chokera at Tigania Law Courts till the proceeding in Succession Cause Number 10 of 2019 pending at Tigania Law Courts are concluded and the issue of ownership/distribution is determined.
 - IV. **That** any other order the court may find just and fit to grant.

2. The application is propped by the grounds set out on the face of it and the Applicant's affidavit sworn on even date.
3. In a nutshell, the Applicant's case is that he has been arraigned in court at Tigania in Criminal Case Number E1259 of 2023, with the offence of Forcible Detainer, contrary to Section 91 of the Penal Code. That the Complainant in that case is his grandmother.
4. The Applicant explained that the aforementioned **Land Parcel No. Kianjai/Kianjai/16395** was the subject of **Tigania Succession Cause No. 10 of 2019**, and it was a sub-division of **Land Parcel No. Kianjai/Kianjai/4522**.
5. The Applicant further states that he was raised on the said parcel of land and his mother, Grace Mwitii, a beneficiary of the estate, is buried there. That he has successfully challenged the confirmation of the grant issued in the said succession cause, from which the complainant's claim arises.
6. The Applicant also states that he raised the issues before the trial court but was advised to move to this court and seek the necessary orders.
7. The Respondent did not file a substantive response, but did file submissions that I shall refer to shortly.

Applicant's Submissions

8. It was submitted that the land in question is part of the estate of the deceased whose grant has been challenged. That if the application for revocation of the grant is successful, then all properties transmitted via the impugned grant cannot stand.

Respondent's Submissions

9. The Respondent submits that while the Applicant insists that he occupies the land having been raised there, he has conveniently neglected to state whether he has lawful ownership of the said land, and that he is a mere squatter, who has refused to vacate the land pending the conclusion of the succession cause.

10. It is further submitted that the Complainant has been wrongly deprived of enjoyment of her right to her parcel of land, which is protected under the Constitution.

11. It is further submitted that by law, both the civil matter and the criminal case can be heard simultaneously.

12. The Respondent urged the court to dismiss the application.

Analysis and determination

13. Before I deal with the application, it would be important to delve into the background to the matter, which I have gathered from a perusal of the material before me.

14. One M'Itimitu Mwirichia (deceased) died on 15th October 2012. Subsequently, one Julius Mwingirwa Mitu petitioned the Principal Magistrate's court for a grant of letters of administration intestate. Subsequently, a grant was issued by the said court on 17th June 2019.
15. On 13th January 2021, the said Julius Mwingirwa Mitu filed summons for confirmation of the grant and the grant was confirmed on 28th January 2021. A certificate of confirmation of the grant was then issued on 5th February 2021. The Petitioner then moved to implement the grant. The only property listed in the summons for confirmation of the grant was land parcel number **Kianjai/Kianjai/4522**.
16. It is apparent that after the confirmation the said parcel of land was subsequently subdivided into several portions, which included parcel No. **Kianjai/Kianjai/16395**, which was then distributed to the complainant.
17. It is also apparent that on 12th January 2024 one Faith Karimi Chokera moved the succession court vide the summons for revocation of a grant dated 8th January 2024. The gist of the application was that the estate of her mother Grace Mitu Kiariungi was not provided for during the confirmation of the grant.
18. In a ruling delivered on 5th October 2024, the trial court noted that it was apparent that the estate of Grace Mitu was not

provided for in the confirmed grant. That the survivors of her estate did not sign any consent on the mode of distribution.

19. The court found that the best way was for the summons for revocation to proceed for hearing through viva voce evidence. In the meantime, the court issued prayer 3 of the summons which was as follows;

“That pending the hearing and prayer for revocation of grant an injunction do issue restraining the Petitioner/Beneficiaries from trespassing, selling, changing or in any other way interfering with the land known as Kianjai/Kianjai/4522 or any resultant sub-division.”

20. It is upon these facts that the court has to determine whether or not to grant the orders sought.

21. As submitted by the Respondent, civil and criminal proceedings that touch on the same subject matter can go on concurrently. This is provided for under Section 193A of the Criminal Procedure Code, which states;

“193A. Concurrent criminal and civil proceedings. Notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil

proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings.”

22. That said, the superior courts have repeatedly expressed their disdain for the use of criminal proceedings. In **Rosemary Wanja Mwagiru Vs A. E. and 3 Others [2013] eKLR** the court held as follows:-

“It is, I believe, undisputed, as provided under Section 193 A of the Criminal Procedure Code, that the institution of civil proceedings does not preclude the State from undertaking criminal proceedings against a party with respect to an issue which is also directly in issue in a pending civil suit.

That notwithstanding, it is the duty of the Court to exercise its inherent jurisdiction so as to prevent its process being used to perpetrate injustice or otherwise as an abuse of its process. Since Githunguri v Republic (supra), it has been established that the High Court is entitled to exercise its jurisdiction to avert abuse of power, discretion or process. Thus, an examination of the events unfolding prior to the institution of the five civil suits and the eventual institution of the criminal complaints by the 2nd and 3rd respondents causes serious unease about the institution of the criminal process. Given the timing of the criminal complaint and the institution of the criminal

prosecutions immediately following upon the filing of five civil claims involving the same parties over the same subject matter, and an application for orders of contempt against the petitioners in the Winding Up Causes which they had lodged against the 2nd and 3rd respondents, it is difficult to reach a conclusion other than that the criminal case was calculated to harass, coerce, oppress or otherwise intimidate the petitioners.”

23. Similarly, in **Reuben Mwangi Vs DPP and 2 Others [2012] eKLR** the court held that;

“It is, hence, a settled legal principle and position that whenever a Petitioner sufficiently demonstrates the stifling of or threats of infringement of rights, fundamental freedoms, the Constitution and/or the law by the investigative and prosecutorial agencies, a Court should not hesitate to intervene and stop such a prosecution. Such intervention by the Courts should, however, be in clearest of the cases.”

24. Lastly, in **Kuria and 3 Others Vs AE (2002) 2KLR 69** the Court held that;

“The Court has power and indeed the duty to prohibit the continuation of the criminal

prosecution if extraneous matters divorced from the goals of justice guide their instigation. It is a duty of the court to ensure that its process does not degenerate into tools for personal score settling or vilification on issues not pertaining to that which the system was even formed to perform.....A stay (by an order of prohibition) should be granted where compelling an accused to stand trial would violate the fundamental principles of justice which underlie the society's senses of fair play and decency and/or where the proceedings are oppressive or vexatious... The machinery of criminal justice is not to be allowed to become a pawn in personal civil feuds and individual vendetta. It is through this mandate of the court to guard its process from being abused or misused or manipulated for ulterior motives that the power of judicial review is invariably invoked so as to zealously guard its (the Court's) independence and impartiality (as per section 77(1) of the Kenya Constitution in relation to criminal proceedings and section 79(9) for the civil process)."

25. Looking at the matter, and even without going into the merits of the succession cause, it is evident, as the trial court in the succession cause concluded, that the estate of Grace Mitu was

not provided for during the confirmation of the grant. Whether the Applicant as an alleged child of the said Grace Mitu is entitled to the estates a question that is awaiting determination.

26. Even move impartially, the succession court issued an injunction relating to the property belonging to the estate.
27. It follows that the continuation of the Criminal Case is prejudicial to the Applicant, who has been allowed to stake his claim in the estate.
28. I am thus satisfied that the Applicant has made out a case to warrant the orders sought. He should be allowed to conclude the succession matter. If he is successful, it would be a travesty of justice if he will have undergone a criminal trial unnecessarily. If he loses then the state can move to conclude the criminal case.
29. I therefore grant the following orders: -
 - I. **That an order is hereby issued staying the proceedings of Criminal Case No. E1259 of 2023 Republic Vs Kenneth Thurania Chokera at Tigania Law Courts until the proceedings in Succession Cause Number 10 of 2019 pending at Tigania Law Courts are concluded and the issue of ownership/distribution is determined.**
 - II. **There shall be no orders as to costs.**

**Dated, Signed & Delivered at Meru this 13th day of
November, 2025.**

**H. M. NYAGA
JUDGE**