

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC CASE NO 336 OF 2013
(FORMERLY HCCC NO 220B OF 2007)

JOYCE NYAMBURA NJOROGE.....PLAINTIFF

VERSUS

**CATHERINE WAIRIMU WANYANGE, JAMES ISSAC
MWANGI (Personal representatives of the Estate
of FRANCIS JOHN WANYANGE)1ST DEFENDANT**
**NATIONAL LAND COMMISSION.....2ND
DEFENDANT**
**THE CHIEF LAND REGISTRAR.....3RD
DEFENDANT**
**THE DIRECTOR OF SURVEY.....4TH
DEFENDANT**
**THE ATTORNEY GENERAL.....5TH
DEFENDANT**

RULING

1. This ruling is in respect of four applications. The first is the 1st Defendant's Notice of Motion application dated 9th January 2025, seeking the following orders:

a) Spent

b) That the firm of Kiarie Njuguna & Co Advocates be allowed to come on record for the Judgement Debtors/Applicants herein in place of M/S Rumba Kinuthia & Co Advocates.

c) Spent

d) That there be a stay of execution of the Decree and Certificate of Costs herein together with all consequential orders pending appeal.

e) That this Honourable Court be pleased to make such orders as shall commend themselves to it in the interest of justice.

2. The application is supported by the annexed affidavits of Catherine Wairimu Wanyange and John Kiarie Njuguna both sworn on 9th January, 2025. Catherine Wairimu Wanyange deponed that on 19th November, 2024, she saw a document sent through her phone and learnt that it was a Notice to Show Cause coming up on 21st November, 2024. She stated that she tried to reach M/S Rumba Kinuthia & Co Advocates without success and then instructed M/S Kiarie Njuguna & Co Advocates to take up the matter and find out the position. It was her deposition that she was shocked to be advised that the judgment against the estate of the deceased and a Bill of costs taxed and was due for execution. She urged the court to give her time to move to the Court of Appeal as they have been greatly prejudiced on account of the mistakes of their advocates.

3. Joyce Nyambura Njoroge, the Plaintiff filed Grounds of Opposition and a Replying Affidavit both dated 20th January, 2025, where she deponed that the Applicants were served with two notices to show cause issued by this Honourable Court on 22nd October and 12th November 2024 respectively on 14th November, 2024 and they did not take any immediate action until 9th January, 2025 when they filed this application which shows laxity.

4. The Plaintiff stated that the application is an abuse of the court process as the Applicants' right of appeal was extinguished as the same was dismissed by the Court of Appeal in its ruling of 23rd February, 2024, in Civil Application E096 of 2022.

5. The second application is the Plaintiff's Notice of Motion application dated 24th February, 2025 seeking the following orders:
 - a) *Spent*
 - b) *Spent*
 - c) *THAT an eviction order do issue against the 1st Defendant's Personal Representatives, namely Catherine Wairimu Wanyange and James Issac Mwangi their agents, servants, employees or any person whomsoever claiming title through them from the said property known as Naivasha/Municipality Block 7/10 and which is also described in an annulled parallel title in which the property is described as L.R No 1144/695 in execution of the Decree of this Honourable Court made on 29th September, 2022.*
 - d) *THAT the eviction order issued herein be executed by Mr. Wilson Mwai Wachira a licensed auctioneer of Class B and t/a M/s whitesilver auctioneers or such any other Court Bailiff as this Honourable Court may direct and deliver the vacant possession thereof to the Plaintiff.*
 - e) *THAT the Officer Commanding Station [OCS] Naivasha Police Station do ensure compliance of the Order made by*

this Honourable Court for the eviction of the 1st Defendant's Personal Representatives from the suit property.

f) THAT such other relief be granted as this Honourable Court may deem fit and just to grant in the unique circumstances of this matter.

g) THAT the costs of this application be provided for.

6. The application is supported by the annexed affidavit of Joyce Nyambura Njoroge sworn on 24th February, 2025, where she deponed that this court issued a judgment dated 29th September, 2022 and her claim was allowed. It was her deposition that the 1st Defendant's Personal Representatives and/or the said Francis Mwangi are now constructing a petrol station hurriedly so as to defeat the orders issued by this Court. The Plaintiff deponed that the police declined to intervene and urged the court to allow the application.

7. The third application is the 1st Defendant's Notice of Motion dated 20th March, 2025 which seeks the following orders:

a) Spent

b) Spent

c) THAT this Honourable court be pleased to allow the Respondent/applicant to liquidate the decretal amount by way of deferred installments.

d) THAT the costs of this application be provided for.

8. The application is supported by the annexed affidavit of James Mwangi Wanyange, sworn on 20th March, 2025, and deponed that he is the

second personal representative of the 1st Defendant/Applicant. He further deponed that they understand the circumstances pertaining to the decree issued on 29th September, 2022, and 25th February, 2025 by this court and they will execute the orders accordingly. James Mwangi Wanyange asked the court for ninety days to execute the orders effectively, and that the personal representatives should be excused from immediate repayment of the decretal sum pending the confirmation of the Grant in Case No 297 of 2019, at Naivasha Magistrates Court.

9. Joyce Nyambura Njoroge, the Plaintiff filed a Replying Affidavit sworn on 29th April, 2025, and stated that the application lacks merit and ought to be dismissed with costs. She deponed that the application is premature as warrants of arrest are yet to issue in the matter, and further that the proposal on payment by instalments does not state the specific amount to be paid and when the said amounts will be available and the applicant's offer is not genuine.
10. The fourth application is the 1st Defendant's Notice of Motion application dated 4th June, 2025 seeking the following orders:
 - a) *Spent*
 - b) ***THAT this Honourable Court be pleased to issue an order of injunction restraining the Plaintiff/Decree Holder from proceeding to take over or forcibly evict the applicant from land Parcel No. Naivasha Municipality Block 7/10.***

c) That this Honourable Court do review and set aside the Judgement and Decree issued herein on 29th September, 2022.

d) Further and/or in the alternative that this Honourable Court do stay any further action in this matter until there is an appointment of an administrator to the estate of Francis John Wanyange Mwangi in Naivasha Succession Cause No 297 of 2019.

11. The application is supported by the annexed affidavit of Catherine Wairimu Wanyange , sworn on 4th June, 2025, and deponed that they were made parties on the strength of a Grant of Letters of Administration made in Naivasha Succession Cause No. 297 of 2019, which were revoked on 8th March 2023, instigated by the Plaintiff. She deponed that the parties had recorded a consent order preserving the *status quo* and restraining the parties from interfering with the suit property until all applications pending are disposed of. She deponed that the Plaintiff in defiance of the consent order has now moved into the suit property and erected a fence thereon.

12. It was also her deposition that the revocation of the Grant was instigated by the Plaintiff and she was under a duty to inform the court that they were no longer authorized to represent the estate.

13. Joyce Nyambura Njoroge, the Plaintiff, filed a Replying Affidavit sworn on 11th July, 2025, and opposed the application and stated that the revocation of the grant was made on 8th March, 2023, pursuant to an

application by the applicants made on 16th November, 2022. She deponed that she did not instigate the revocation and she only filed an affidavit of protest in the Succession Cause and took no other step in the matter.

14. Catherine Wairimu Wanyange filed a Supplementary Affidavit sworn on 7th August, 2025, and deponed that she never instructed any advocate to apply for Revocation of Grant, and that the revocation of grant issued on 8th March, 2023, means that no further action should have taken place against the estate or against themselves until a fresh grant is issued. It was her deposition that the decree issued against them, is invalid because they are not the legal representative of the estate of Francis John Wanyange.

1ST DEFENDANT'S SUBMISSIONS

15. Mr. Njuguna, counsel for the Defendant filed submissions dated 11th August, 2025, on the Notice of Motion dated 9th January, 2025, and submitted that the application is overtaken by events and asked the court to mark it as abandoned. On the Notice of Motion dated 20th March, 2025, counsel submitted that it is presented by a firm of advocates that had already ceased acting for the parties and it should be struck out with costs which should be borne by the advocates.
16. On the Notice of Motion dated 4th June, 2025, counsel submitted that the moment the grant was revoked, the administrators lost their capacity to represent the estate, and relied on the cases of **In the Estate of William**

Mbogo Njunu (deceased) Succession Cause No 5 of 1999 KEHC 16613 [KLR], Estate of Njuguna Thagicu (Deceased) [2018] eKLR and P & A Appeal No 1 of 2019 [2022] KEHC 1322 KLR.

17. On the application dated 24th February, 2025, counsel urged the court to strike out the application as the parties against whom it is brought are not in any position to be sued on behalf of the estate having lost their capacity. Counsel submitted that the Judgment herein is null and void as the persons against whom it was entered have no capacity in law.

PLAINTIFF'S SUBMISSIONS

18. Mr. Kimondo, counsel for the Plaintiff filed submissions dated 15th August 2025, and submitted that all the applications brought on behalf of the 1st Defendant by the Judgment debtors are incompetent for lack of capacity and relied on the case of **Getrude Chao Waita & another vs Agnes Wamaitha Kibuchi & another [2020] KEELC 2578 (KLR)**.
19. Counsel submitted that the Applicants remained the legitimate personal representatives of the estate of the deceased until 8th March 2023 when the grant was revoked. Counsel submitted that judgment in this matter was delivered on 29th September, 2022 at which time the applicants were seized with the power to represent the estate.
20. It was counsel's submission that the appointment of an administrator is not a necessity at the execution stage and there exists a valid decree against the estate of the 1st Defendant in favour of the Plaintiff, and

relied on the case of **Re Estate of Johanna Kariuki (Deceased) Succession Cause 647 of 2015) [2025] KEHC 8412 (KLR)**.

21. On the Judgment's debtor application dated 9th January, 2025, counsel submitted that there is no appeal that is pending before the Court of Appeal, as the application for leave to file an Appeal out of time was heard and dismissed by the Court of Appeal vide civil Appeal No E096 of 2022 in a Ruling dated 23rd February 2024. Counsel relied on the case of Nairobi **West Hospital vs Kithinji & another (Miscellaneous Civil Application E266 of 2023) [2024] KEHC 3784 {KLR}**.
22. On the judgment debtor's application dated 20th March, 2025, counsel submitted that the orders sought are untenable and that the application should be dismissed to pave way for execution as the applicants have no intention of complying with the decree having declared the same invalid and were thus not genuine in their offer to liquidate the decretal amount in installments. On the judgment debtor's application dated 4th June, 2025, counsel submitted that the same has not been brought timeously.
23. Counsel submitted that the Honourable Court directed that the applicants were to give vacant possession of the suit property within ninety days failing which they should be evicted. Counsel relied on Order 45 Rule 1 of the Civil Procedure Rules and the cases of **Jaber Mohsen Ali & another vs Priscillah Boit & another [2014] KEELC 132 (KLR)**, **John Muhoro Mwangi vs James Kamau Mwangi & Another [2012] KEHC 4469 (KLR)**, **Isaac Olang Solongo vs Gladys Nanjekho**

Makokha (Being the administrator of the Estate of Antonina Makokha (Deceased) & another [2021] eKLR and Benson Manani Mahinye vs Waiganagana A. Kendi [2016] KECA 491 (KLR).

24. On the Decree holder's application dated 24th February, 2025, counsel submitted that in the absence of extension of time within which the Judgment debtors should deliver vacant possession of the suit property, the application succeeds as the scales tilt in favour of the decree holder.

ANALYSIS AND DETERMINATION

25. Counsel for the 1st Defendant asked this court to disregard the following applications filed by their legal representatives: the Notice of Motion applications dated 9th January, 2025 and 20th March, 2025. It therefore follows that the issues for determination are:

a) Whether the Plaintiff's Notice of Motion application dated 24th February, 2025 is merited?

b) Whether the 1st Defendant's Notice of Motion application dated 4th June, 2025 is merited?

26. This court delivered a judgment dated 29th September, 2022, which is on record and is acknowledged by all the parties. The 1st Defendant contends that as personal representatives of the deceased, who were made parties on the strength of a Grant of Letters of Administration made in Naivasha Succession Cause No 297 of 2019 was revoked on 8th March 2023.

27. The 1st Defendant therefore submits that since the grant was revoked, the administrators lost their capacity to represent the estate. The Plaintiff on the other hand contends that judgment in this matter was delivered on 29th September, 2022 at which time the 1st Defendant's representatives were seized with the power to represent the estate.

28. In the case of **Re Estate of Johanna Kariuki Githinji (Deceased) [2025] KEHC 8412 (KLR)**, the court pronounced as follows at paragraph 16:

“Generally, legitimate acts carried out by the administrator in good faith before the revocation of Grant are protected, especially if the third party had no knowledge of any defect. However, this protection is not absolute; fraudulent or collusive transactions, or those undertaken in bad faith by the administrator (even before revocation), or if the third party was aware of defects, may still be set aside by the court. Accordingly, while Section 93 protects purchasers, it does not shield a fraudulent or negligent administrator from accountability to the estate and beneficiaries...”

29. By the time the Judgment was delivered, the Administrators had the full and legal capacity to act on behalf of the estate of the deceased having been appointed as such. The grant was revoked on 8th March 2023, after the judgment and decree had been issued including an order for vacant possession/eviction within 90 days which the Judgment Debtors did not comply with.

30. The court notes that the 1st Defendants are seeking substantive orders from this court in their Notice of Motion application dated 4th June, 2025 despite acknowledging that they currently do not have the capacity to represent the deceased.
31. The Judgment Debtors submitted that there should be stay of proceedings pending the appointment of new administrators. This is a case that was heard and determined, a judgment rendered and an order issued for the defendants to give vacant possession within 90 days, which the Defendants did not comply with.
32. Similarly it is on record that the Defendants filed an application in the Court of Appeal seeking leave to extend time within which to file an appeal out of time which was dismissed on 23rd February 2024. It follows that there is no appeal pending hearing and determination. Why would the court be hearing an application for stay if there is no appeal. What would be the end game of such an application, would it be to buy time or to frustrate a successful litigant from enjoying the fruits of the judgment.
33. It is also surprising that the Applicant is asking for time to pay the decretal amount by instalments, what instalments and how much. The Applicants are also blowing hot and cold, on one hand they state that they do not have the capacity to represent the estate, and on the other, they are filing applications to negotiate instalment payment and stay of execution and proceedings.

34. It is unfortunate that counsel filed a total of four applications which they admit have been overtaken by events. This court finds that the revocation of the grant post-judgment is not a fetter to the Plaintiff to continue with the execution process. The 1st Defendant's personal representative's had legal capacity during the trial and they cannot now ask this court to set aside its judgment.
35. Similarly, it is trite law that substitution is not a necessity where a judgment debtor dies as the Decree Holder can execute against party who intermeddles with the estate.
36. I have considered all the four applications by the parties, the submissions by counsel and issue the following orders:
- a) An eviction order is hereby issued against the 1st Defendant's Personal Representatives, namely Catherine Wairimu Wanyange and James Issac Mwangi their agents, servants, employees or any person whomsoever claiming title through them from the said property known as Naivasha/Municipality Block 7/10 and which is also described in an annulled parallel title in which the property is described as L.R No 1144/695 in execution of the Decree of this Honourable Court made on 29th September, 2022.*
 - b) The eviction order issued shall be executed by Mr. Wilson Mwai Wachira a licensed auctioneer of Class B and t/a M/s Whitesilver auctioneers.*

- c) The Officer Commanding Station [OCS] Naivasha Police Station shall ensure compliance of the Order made by this Honourable Court for the eviction of the 1st Defendant's Personal Representatives from the suit property.*
- d) Costs of the Notice of Motion application dated 24th February, 2025 are awarded to the Plaintiff.*
- e) The Notice of Motion application dated 4th June, 2025 is hereby dismissed with costs.*
- f) The Notice of Motion application dated 9th January, 2025 is hereby struck out with costs.*
- g) The Notice of Motion application dated 20th March, 2025 is hereby struck out with costs.*

DATED, SIGNED AND DELIVERED AT NAKURU THIS 12TH DAY OF NOVEMBER 2025.

**M. A. ODENY
JUDGE**