

REPUBLIC OF KENYA A
IN THE HIGH COURT OF KENYA T MERU
SUCCESSION CASE NO. 255 OF 2010

**IN THE MATTER OF THE ESTATE OF M'IMPWI M'IKIUGU
NKATHA- (DECEASED)**

**BEATRICE NKATHA
M'IKIUGU.....PETITIONER**

RULING/DIRECTIONS

1. This matter comes up for ruling on two applications namely:
 - a) Application dated 12/2/2021 by Elias Mwirigi Arimi who claims land parcel No. Abothoguci/Kariene/2490 as a purchaser.
 - b) Application dated 23/9/2021 by Eustus Munene Mutungi who lays claim to land parcel No. Abothuguci/Karieni/4638 which is a sub division of parcel No. Abothoguci /Kariene/2491 as a purchaser.
2. Both applications seek to review the judgment of this court delivered on 19/12/2018.

3. On 27/09/2023, my sister Justice T. W Cherere ordered that the said applications be heard by way of viva voce evidence. Hearing of the same partly proceeded before her but she was transferred from the station before the conclusion of the hearing.
4. When I took over the matter, the matter continued to the conclusion of the hearing. Parties were then directed to file simultaneous submissions.
5. As I perused the court record, which was quite a long and complicated history, I noted that the objector herein, Moses Gituma Impui vide his affidavit sworn on 4th June 2020 in respect to Constitutional Petition No. 20 of 2020, indicated that he had preferred an appeal against the judgment herein, being appeal No. 261 of 2019 in the Court of Appeal.
6. On 24/10/20204 when the parties attended court, Miss Murugi appearing for the objector reiterated that there was a pending appeal in the Court of Appeal. The parties did not give the court an indication of whether the appeal has been dealt with by the Court of Appeal. It is thus to be presumed that the same is pending determination.
7. In the absence of any information on the fate of the said appeal I am of the view that this court cannot deal with the

applications at hand. Doing so will be tantamount to determining the appeal by the objector over the two parcels of land through the back door.

8. In my view the determination of the appeal in the Court of Appeal will effectively take account or affect the tenure of the applicants and the said parcels of land, since they bought the land from the Objector, directly or indirectly.
9. While I appreciate that the applicants did not participate in the trial when the judgment in question was delivered, and that they are adversely affected by the orders therefrom, the court has to be wary of wading into matters that are now before the appellate court.
10. In the circumstances, I find that it is premature to handle the said applications.
11. It may be argued that the consequence of this finding would be to strike out both applications but it has to be remembered that the applicants may have been totally unaware of the existence of the said appeal. As such striking out the applications now may be harsh and drastic and is not in the interest of justice.

12. For the foregoing reasons, I find that the best way is to stay the hearing of the two applications for now. The parties to await the decision of the Court of Appeal.

13. It is so ordered.

**Dated, signed and delivered at Meru this 15th day of
January 2026.**

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**H. M. NYAGA
JUDGE**