



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 2377 OF 2008
IN THE MATTER THE ESTATE OF BERNARD NJONJO RUBIAH
(DECEASED)

BRIAN MWITURIA

APPLICANT

VERSUS

ESTHER WANGARI WATHUA

RESPONDENT

RULING

1. This ruling relates to the application dated **18th June, 2024** filed by the Applicant, Brian Mwituria, seeking for **ORDERS THAT:**

1. The court be pleased to extend the 90 days compliance period issued by this honourable court in Order number (g) of the ruling delivered on 7th March, 2024.

- 2. The Respondent do deposit with the honourable court titles No. LR 13790/6, Karen and L.R. No. Tezo/Kibarani/Tezo Konjora Block 1/413 pending the publication and sale of the said properties.**
- 3. The Applicant and/or his agents be accorded full access to L.R. 13790/6, Karen for purposes of inspection and sale of the property by public auction.**
- 4. The Respondent and/or her siblings or tenants do vacate L.R. No. 12790/6, Karen to allow for the inspection and sale of the said property.**
- 5. The advocates for the parties M/S Mereka & Company Advocates and Kamau Kuria & Company Advocates do proceed and open a joint account with Equity Bank, Yaya Centre Branch for purposes of depositing the sale proceeds for L.R. No. 13790/6, Karen and L. R. No. Tezo/Kibarani/Tezo Konjora Block 1 413 and proceed to distribute the net amount of the sale proceeds equally between the parties after deduction of all liabilities and pursuant to the further amended confirmed grant dated 7th March, 2024 and separately with respect to each property.**
- 6. Should the advocate for the Respondent, aforesaid, fail to execute the bank account**

opening forms as aforesaid within 14 days, the Deputy Registrar of the High Court be authorized to execute the said account opening forms at Equity Bank.

7. Should the Respondent fail to execute the transfer documents relating to L.R. No. 13790/6, Karen and L. R. No. Tezo/Kibarani/Tezo/Konjora Block 1/413 upon successful sale of the said property within 14 days of delivery, the Deputy Registrar of this honourable court be authorized to execute the said transfer documents in place of the Respondent.

8. The Officer Commanding Karen Police Station (OCS) be ordered to after security to the Applicant and/or his agents in carrying out the eviction, inspection and sale of L.R. No. 13790/6, Karen.

9. The costs be in the cause.

2. The application is based on the grounds thereof and supported by affidavit and further affidavit sworn by Brian Mwituria on **18th June, 2024** and **29th August, 2025** respectively.
3. He avers *inter alia* that after the ruling delivered **7th March, 2024**, his lawyers sent a rectified grant to the Respondent's lawyers for approval and asked for an agreement on appointing a valuer, but they did not get any

response. He then went ahead to get valuation quotes and hired a valuer who assessed **L.R. No. 13790/6** Karen at **Kshs. 50,000,000/=**. This report was shared with the Respondent's lawyers, but again, there was no reply.

4. He claims that he has been denied access to the property for inspection and sale, while the Respondent still holds the title and continues to collect rental income without providing any accounting. He believes the delays in following the court's orders are due to the Respondent's lack of cooperation, issues in obtaining survey plans and challenges related to subdividing **Tezo/Kibarani/Tezo/Konjora Block 1/413**.
5. As a result, he is requesting an extension of time, access to the property, the deposit of title documents in court and additional orders to help facilitate the sale and distribution, including execution by the Deputy Registrar and police assistance if needed.
6. He emphasizes that the court had ordered valuation and equal sharing of the proceeds. He insists that the Respondent's failure to engage or respond to communications has hindered the implementation of these orders. He argues that the delays have caused him significant prejudice, especially given his financial difficulties and he urges the court to extend the time and grant the requested orders to enforce the confirmed grant, referencing **Article 159** of the Constitution of Kenya, 2010.

7. The application is opposed vide replying affidavit sworn by Esther Wangari Wathuta on **14th June, 2025**. She avers *inter alia* that the application is based on a misunderstanding of both the facts and the law. She argues that the Applicant has not followed previous court instructions, especially regarding the agreed-upon process for valuing and managing the estate.
8. According to her, the Applicant ignored the need for mutual agreement when appointing a valuer and instead acted alone, which goes against the court's orders. She believes that when the parties cannot agree on a single valuer, each party is free to choose their own, which has already been done in this case. Therefore, she claims that the Applicant's complaints are baseless.
9. Furthermore, she asserts that she has a legitimate interest in the estate property, including **L.R. No. 13790/6 Karen**, due to a grant related to another estate. She insists that her presence and management of the property are both lawful and essential for its upkeep. She disputes the claims that the property is being wasted or poorly managed, arguing that the Applicant has failed to recognize her legal role and interest in protecting the estate.
10. She also takes issue with the Applicant's assessment of the property's value and management, calling it incorrect and lacking support. Additionally, she explains that the delay in finalizing the valuation and sale of the properties, as

mandated by the court, was due to disagreements between the parties, particularly regarding the choice of valuer, and not because of any obstruction on her part.

11. She emphasizes that practical and legal challenges, including disputes over how to value the property and adherence to procedural rules, have slowed progress, and she believes that the Applicant's attempt to shift blame is misguided.
12. In conclusion, she argues that the application is without merit, contains inaccuracies and seems to be an effort to bypass due process. She asks the court to recognize that the Applicant has not provided a solid foundation for the prayers sought.
13. The Applicant has filed written submissions dated **29th August, 2025** and rejoinder submissions dated **4th November, 2025**; while the Respondent has filed written submissions dated **4th November, 2025**.

ANALYSIS AND DETERMINATION

14. I have read the application, the response thereto and the rival submissions and address them as follows:
15. In JNM v JNM [2020] KECA 600 (KLR) the court pronounced itself as follows: "...12... The principles that guide the court on whether to enlarge time or not are now old hat. In **Leo Sila Mutiso vs. Hellen Wangari Mwangi, Civil Application No. Nai. 255 of 1997**, it was stated that in an application for extension of time, the relevant factors to

be considered is the length of delay; the reason for delay; the chances of appeal succeeding and the degree of prejudice (if any) likely to be caused to the Respondent if extension of time is granted. 13. These principles have not changed and in the recent past, they have been expounded in the Salat case (*supra*) by the Supreme Court as follows: -

“...it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the Applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the Applicant. “... we derive the following as the underlying principles that a Court should consider in exercising such discretion: 1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party, at the discretion of the Court; 2. a party who seeks extension of time had the burden of laying a basis, to the satisfaction of the Court; 3. whether the Court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis; 4. where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court; 5. whether there will be any prejudice suffered by the Respondents, if extension is granted;

6. whether the application has been brought without undue delay.” While appreciating that this Court’s discretion to enlarge time is unfettered, the discretion must be exercised within the parameters enumerated in the Salat case (supra) and many other cases...”

16. The Applicant is seeking for more time to meet the court’s orders issued vide ruling delivered on **7th March, 2024**, which include facilitating the valuation and sale of the estate properties, along with the necessary enforcement measures.
17. The guiding principles applicable herein include that the Applicant needs to show a valid reason for needing more time, and for any enforcement orders, he must prove that he has either complied with or made genuine efforts to comply with previous court instructions, along with showing evidence of any obstacles or unfairness he faced.
18. It is not in dispute that the orders called for the properties to be valued and sold, with the proceeds split equally. The main question is whether the delay in compliance can be justified and if the Applicant deserves the coercive and facilitative orders he is seeking.
19. The Applicant claims that his inability to comply is due to the Respondent’s alleged lack of cooperation, which includes not agreeing on a valuer, denying access and not responding to communication.

20. However, the Respondent points out an important issue *to wit* the court intended for the valuation process to be consensual; and if there was no agreement, each party could appoint their own valuer.
21. There is no evidence on record showing that the Applicant made formal attempts to get the court involved when disagreements arose, or lack thereof, on appointment of a joint valuer which would have been the right step to take before asking for coercive measures like eviction, police help or intervention by the Deputy Registrar.
22. When it comes to extension of time, it is my considered view that delays in managing estates, especially those stemming from disagreements among parties and practical issues like valuation and subdivision, can be valid reasons for extension of time. However, the Applicant still needs to show that they've been diligent and acting in good faith.
23. It also appears to me that the Respondent has not been helpful either. She has not shown any evidence or efforts she took to execute and or implement the orders of 7th March 2024 save to blame the Applicant for failing to comply. Prayer (f) had granted both parties the opportunity to implement the orders.
24. I think this is a case where the court **must stamp** its feet and direct the parties to do what they ought to instead of inundating it with applications upon applications. It is a

shame that 18 years later and counting this estate is still in this court corridors.

25. In the premises and pursuant to the orders issued on 7th March 2024 I further direct that:

(a) The Deputy Registrar of this court will appoint a duly registered valuer to carry out valuation as directed by the orders of 7th March 2024 within 21 days from the date herein and the valuers' costs shall be met by both the Applicant and the Respondent equally and in default the said valuers bill shall be presented for taxation.

(b) The Applicant or the Respondent or whoever is holding the title deeds or any legal instruments for the properties namely LR NO 13790/6 and TEZO/KIBARANI/TEZO/KONJORA BLOCK 1/413 shall deliver their originals to the Deputy Registrar of this court within 10 days from the date herein and in default the Deputy Registrar shall issue warrants of arrest.

(c) The parties or whoever is in occupation of LR NO 13790/6 shall grant unhindered an unlimited access to the Deputy Registrar of this court or the valuer or any other agent authorised by the Deputy Registrar for purposes of carrying out the valuation exercise or any other purpose she may desire to be undertaken at the premises.

- (d) The Officer in Charge (OCS) Karen Police Station shall ensure compliance with the above order.**
- (e) Upon the above valuation exercise the Deputy Registrar of this court shall immediately and not later than 14 days after receiving the valuation report appoint a registered auctioneer who shall advertise the same for sale in a public auction and the proceeds be deposited in court for onward transmission to the parties less any outgoings and or liabilities and the auctioneers' charges shall be shared equally between the Applicant and the Respondent.**
- (f) Costs of this application in the cause.**

**Dated signed and delivered via video link this
9th day of April 2026.**

**H K CHEMITEI
JUDGE**