



**In re Estate of Petro M’raikuru alias M’raikuru Maru (Deceased) (Succession Cause 274 of 2007) [2025] KEHC 1251 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1251 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 274 OF 2007  
EM MURIITHI, J  
FEBRUARY 27, 2025**

**BETWEEN**

**DAVID M’MBOROKI M’RAIKURO ..... PETITIONER**

**AND**

**JEREMIAH KITHINJI M’RAIKURU ..... PROTESTOR**

**AND**

**CHARLES MUGUNA MUTHURI ..... INTERESTED PARTY**

**RULING**

1. By a Notice of Motion under certificate of urgency dated 12<sup>th</sup> October, 2023 pursuant to Sections 45 and 47 of the *Law of Succession Act*, the Applicant seeks that:
  1. Spent
  2. This Honorable Court be pleased to grant a temporary order of injunction restraining the Respondent from interfering, destroying, cutting down trees or damaging any of the estate’s properties within L.R Nyaki/Giaki/503 pending the hearing and determination of this suit.
  3. This Honorable Court be pleased to grant an order of injunction restraining the Respondent from interfering, destroying, cutting down trees or damaging any of the estate’s properties within L.R Nyaki/Giaki/503 and restrict himself to three (3) acres which he has been in occupation since 1985 which is distinct and identifiable on the ground.
  4. This honorable court be pleased to review, vary or set aside the previous orders allowing the deputy registrar to execute the conveyance documents of transmission pending verification of the Respondent’s entitlement on the ground and allow the administrator herein to sign and execute the transmission instruments within three (3) months.



5. This honorable court be pleased to grant any other orders in the interest of justice.
2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of David M'Mboroki M'Raikuro, the Applicant herein, sworn on even date. He avers that this matter was heard and concluded as per the certificate of confirmation of grant dated 12/11/2018. While the Respondent bought only 3 acres from their father, he has invaded the entire estate and destroyed all their properties indiscriminately with a view of evicting them. He is willing to engage a government surveyor to excise the Respondent's 3 acres where he has always settled. The application has been brought in good faith to ensure peace and tranquility, and he prays that it is allowed, before more destruction and mayhem is witnessed.
3. The Respondent opposed the application vide his replying affidavit sworn on 12/2/2024. He maintains that the instant application is full of falsehoods intended to hoodwink the court into believing that he is intermeddling with the estate. Pursuant to the orders of this court, his entitlement of 3 acres of L.R No. Nyaki/Giaki/503 (henceforth called the estate property) was surveyed, excised and allocated a new number namely L.R No. Nyaki/Giaki/7437. Subsequent to the survey, he fenced his land and started cultivating it. In his view, it is the Applicant and his children who have encroached on his land and cut down two mature trees thereon. The Executive Officer of the court executed all the requisite transfer documents and the review sought will only result in undue delay.
4. The Protestor did not file any response to the application.
5. On 13/11/2024, the parties agreed to rely on the affidavits on record without filing any submissions, and ruling was reserved.

#### **Analysis and determination**

6. The sole issue for determination is whether the Applicant has met the threshold for grant of the orders sought.
7. Order 40 Rule 1 of the Civil Procedure Rules provides for cases in which a temporary injunction may be granted as follows;

“Where in any suit it is proved by affidavit or otherwise— (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”
8. The Applicant laments that the Respondent has encroached on the entire estate property and made wanton destruction thereon by destroying and cutting down trees. In quick rejoinder, the Respondent urges that when it became apparent that the Applicant was hell bent on frustrating the implementation of the certificate of confirmation of grant, he successfully applied to have the Executive Officer of the court execute the transfer documents on behalf of the Applicant. To add insult to injury, the Applicant vehemently refused to cooperate during the subdivision of the estate property, which prompted the court on application by the Respondent to intervene by directing the O.C.S Gaiki Police Station to provide security during the exercise. The Respondent's 3 acres was successfully excised and fenced off



from the estate property. The Respondent subsequently applied for registration of the said parcel, now called L.R No. Nyaki/Giaki/7437 in his name and he was successfully issued with a title deed thereto on 9/2/2024.

9. The import of the orders sought by the Applicant is to effectively render void ab initio all the steps taken herein by the Respondent to ensure L.R No. Nyaki/Giaki/7437 is registered in his name, which this court cannot countenance, because due process and the law were complied with to the letter.
10. This court finds that the Respondent will suffer irreparable loss if he is temporarily restrained from utilizing his 3 acres of the estate property, which has since been legally alienated and a title deed issued.
11. On the same breath, the prayer to set aside the order authorizing the Executive Officer of this court to execute the transfer documents on behalf of the Applicant has been overtaken by events and so much water has already passed under the bridge.
12. The court is minded that the issuance of the orders sought by the Applicant will occasion the Respondent grave injustice, by unreasonably keeping him away from his rightful entitlement without any justifiable cause. The court is enjoined by the provisions of section 47 of the *Law of Succession Act* to issue expedient orders to ensure the ends of justice are met.
13. The court finds that the Applicant has failed on the test in *Giella v Cassman Brown* (1973) EA 358, to establish a prima facie case and that damages would be inadequate compensation in the circumstances of this case.
14. Consequently, the balance of convenience lies on the refusal to grant of temporary injunction and review to allow the respondent to utilize the suit property over which he is registered proprietor with title deed issued.

#### **Orders**

15. Accordingly, for the reasons set out above, the Court finds that the application dated 12/10/2023 is without merit and it is dismissed.
16. There shall be no order as to costs.

Order accordingly.

**DATED AND DELIVERED THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Muchiri Adv. for Mr. Ouma Adv.for Interested Party.

Mr. Gikunda Anampiu, Adv. for the Petitioner.

