



REPUBLIC OF KENYA



KENYA LAW

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**In re Estate of the Late Joseph Magiri alias Jusufu Magiri alias Magiri Mwiricha - Deceased
(Succession Cause 629 of 2009) [2025] KEHC 4607 (KLR) (25 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4607 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 629 OF 2009**

LW GITARI, J

MARCH 25, 2025

**IN THE MATTER OF THE ESTATE OF OF THE LATE
JOSEPH MAGIRI ALIAS JUSUFU MAGIRI ALIAS
MAGIRI MWIRICHA - DECEASED**

BETWEEN

PETER NTEERE MAGIRI PETITIONER

AND

SUSAN MWITIMBIA NTEERE 1ST RESPONDENT

CATHERINE MUGAMBI 2ND RESPONDENT

MUKIRI MUTHURI 3RD RESPONDENT

RULING

1. The matter pending before this court is a summons dated 7/3/023 which seeks orders that the respondents be evicted from Land Parcel No. Plot 6 Katheri Market. That the OCS to provide security for the eviction of the respondent.
2. It is based on the ground that the court confirmed the grant on 23/1/2014 and ordered that Plot No. 6 Katheri Market be sold and proceeds be shared equally among the beneficiaries. That the respondents have refused to vacate the land despite several reminders.
3. The respondents did not oppose the application. I however note that the court had directed that they be served. I have perused the record and I have noted that there is no evidence of service on the respondents. I have considered the application.



4. Section 82(a) of the *Law of Succession Act* (Cap 160 Laws of Kenya) provides that:-

“Personal representative shall subject only to any limitation imposed by their grant, have powers to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arise out of his death for his estate.”
5. While dealing with the interpretation of the above provision, the court in the case of *Alexander Mutunga Wahome -vs- Peter Lavu Tumbo & Another* (2015) eKLR, it was stated:-

“In law one can only represent the estate of a deceased person when a grant of representation has been made in respect of the estate of such deceased person under the *Law of Succession Act*. In addition, Section 82 of the *Law of Succession Act* provides that it is the personal representative who has the powers to enforce, by suit or otherwise, all causes of action, which by virtue of any law serve the deceased. A personal representative is defined under Section 3 of the Act as the executor or administrator as the case may be of a deceased person.”
6. Section 45 of the *Law of Succession Act* out laws intermeddling with the estate of a deceased. The applicant has annexed a demand letter PNM 2 where he claims that the respondents are trespassers. The property of a deceased person cannot be lawfully dealt with by anybody unless such a person is authorized to do so by the law and the courts take a very serious view of intermeddling, making it a criminal offence, see Section 45 of the *Law of Succession Act*.
7. The respondents are not parties to the succession cause. It is a cardinal rule of natural justice that a person should not be condemned unheard and has a right to have a fair hearing. Article 50(1) of *the Constitution* provides that every person has a right to have any dispute that can be resolved by application of the law decided in a fair and public hearing before a court, or if appropriate, another independent and impartial tribunal or body.
8. The *Law of Succession Act* envisages resolutions of dispute touching on the administration of estates of deceased person and for purpose connected there with an incidental thereto. See the preamble to the Act.
9. Section 82 of the Act supra providers that personal representatives have powers to enforce by suit all causes of action appertaining to the estate of the deceased that survive the deceased or arose out of his death. The applicant seeks eviction of the respondents who are alleged to be trespassers on a plot forming part of the estate of the deceased. It is trite law that an owner of a property has the right to evict a trespasser and that where such eviction is effected, the owner may also remove the property and goods of the person evicted so as to leave the premises empty. The right is given to the owner of the property. The applicant is not the owner of the property as yet as he is the administrator of the property which forms the estate of the deceased on behalf of the beneficiaries.
10. A probate and Administration to give effect to Article 162 (2) (b) court has no jurisdiction to determine matters of trespass. Article 162 (2) (3) of *the Constitution* provides that:-

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to

b) the environment and the use and the occupation of, and the title to land.”



- 3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).” Parliament enacted Environment & Land Court Act.
11. The court with jurisdiction to determine issues of trespass is the Environment and Land Court. Disputes between the Administrators of the Estate and third parties touching on issues of trespass to land and 3rd parties should be resolved through the Civil process by way of filing a civil suit in the court with jurisdiction In accordance with provisions of the *Civil Procedure Act*.
12. Section 82 of the *Law of Succession Act* provides that an administrator should file a suit to enforce all causes of action which survive the deceased or arise out of his death.
13. In this application, the applicant claims that the respondents are trespassers on the estate. The applicant did not serve the respondents as ordered by the court.
14. It would be unfair for this court to order the respondents to be evicted without giving them an opportunity to be heard as this would violate their right to fair hearing. The applicant was supposed to file a suit against the respondents who are third parties as he has alleged that they are trespassers and not beneficiaries, in the appropriate court with jurisdiction.
15. Conclusion
The application is not properly before this court.
Order: The application is dismissed.

DATED, SIGNED AND DELIVERED AT MERU THIS 25TH DAY OF MARCH 2025

HON. LADY JUSTICE L. GITARI

JUDGE

