



In re Estate of John Gakunga Njoroge (Deceased) (Succession Cause 256 of 1995) [2025] KEHC 5572 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5572 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 256 OF 1995
EN MAINA, J
APRIL 30, 2025**

IN THE MATTER OF THE ESTATE OF JOHN GAKUNGA NJOROGE (DECEASED)

BETWEEN

FREDRICK M NJOROGE KINYANJUI 1ST ADMINISTRATOR

JOHN MUIINDE GAKUNGA 2ND ADMINISTRATOR

AND

JOHN MUIITHYA MWANIA APPLICANT

RULING

1. By the Summons dated 2nd May, 2024 the Applicant, John Muithya Mwanja, seeks an order for the *status quo* concerning his occupation of a parcel of land belonging to the estate in these proceedings to be maintained. He also seeks an order of temporary injunction to restrain the Administrators/beneficiaries of the estate from disrupting, evicting or interfering in any manner whatsoever with his occupation of his 7 acres in parcel No.27 Kitanga Settlement Scheme until an application dated 14th March, 2024 is heard and determined.
2. The Summons is premised on grounds that the Applicant filed an application dated 14th March, 2024 seeking to have the orders issued by this court on 6th December, 2023 varied, reviewed and/or set aside; that on 19th March 2024 Rayola J directed that the application dated 14th March, 2024 be served upon the Respondents but did not issue any interim orders thereby leaving the Applicant extremely exposed as the Respondents have threatened to evict and demolish his home despite that he is a senior citizen who is ailing. He fears that if the injunction is not issued the substratum of his application dated 14th March,2024 will be rendered nugatory and he shall suffer irreparable loss and damage without being accorded an opportunity to be heard. He therefore urges this court to grant him the orders sought and restrain the Respondents from evicting him from the parcel of land pending hearing and determination of the application.



3. The summons dated 14th March 2024 seeks review of the orders issued herein on 16th December 2023 and hearing of the Applicant's summons dated 7th November, 2023 which was dismissed by my predecessor Muigai J for want of jurisdiction. In the grounds for the application dated 7th November 2023, Learned Counsel for the Applicant seems to suggest that the court dealt with the application in the manner it did because the Advocate he had sent to represent him was not very conversant with the matter. Counsel contends that the Applicant herein was never a party to the proceedings which took place in this case in the year 2004 and he ought to be given an opportunity to ventilate his case as is his right to do so. He prays therefore that the orders of 6th December 2023 be varied, reviewed or set aside so as to give the Applicant an opportunity to cavass his case.
4. The Summons dated 14th March 2024 is supported by the affidavit of George Kalice, Counsel for the Applicant, sworn on 14th March, 2024. The affidavit merely reiterates the grounds upon which the summons is premised.
5. In opposition to the Summons dated 14th March 2024, the Respondents filed a Replying Affidavit sworn by the 1st Respondent Fredrick M. Njoroge Kinyanjui, on 3rd July 2024. In the affidavit Fredrick M. Njoroge deposes that the Applicant is a spouse of one Beth Mueni who on 3rd November 2014, unsuccessfully sought to set aside the confirmed grant herein which litigation culminated in an appeal viz Nairobi Court of Appeal in *Civil Appeal No.140 of 2017* being an appeal against the judgment of this court rendered on 16th November 2015, (Muriithi J), but which appeal was dismissed. The deponent avers that the Applicant has admitted that Beth Mueni was his wife; that the said Beth Mueni being his spouse he must have been aware of the proceedings that went upto the Court of Appeal only that he now seeks to rely on a different sale agreement purporting that he purchased the land from the late John Gakunga Njoroge. Fredrick M. Njoroge concedes that he together with the other beneficiaries of the estate are in the process of giving notices to vacate to all persons illegally occupying their land including the Applicant. He further avers that upon her appeal being dismissed, Beth Mueni approached the Environment and Land Court (ELC) vide *Machakos ELC No. E006 of 2023*, seeking to be declared the owner of the land by way of adverse possession which suit was struck out on 4th April, 2024 and which facts are well within the Applicant's knowledge. He deposes that the several applications filed by the Applicant and his spouse in different courts s are merely intended to frustrate their enjoyment of the fruits of their judgment.
6. When the application dated 2nd May, 2024 came up for hearing before me on 22nd January 2025, Learned Counsel for the Respondent notified this court that they wished to raise a preliminary point of law. Counsel for the Applicant was not present on that day but nevertheless this court gave directions that the preliminary point of law would be heard first by way of written submissions and gave timelines for that purpose. It also ordered Counsel for the Respondents to serve the directions and mention date upon Counsel for the Applicant. Counsel for the Applicant duly attended court on the given mention date, to wit 21st February, 2025, and prayed for more time to file his submissions but which he has not done todate.
7. The preliminary point of law raised by the Respondents is on the jurisdiction of this court to hear and determine the two applications field by the Applicant. In his submissions dated 20th February 2025, Learned Counsel for the Respondents has argued that the applications are *res judicata* as the same were heard and determined by my predecessor, Muigai J who on 6th December 2023 pronounced that she could not render herself in this cause as she could not sit on appeal against either the ruling of Muriithi J, or the Court of Appeal. She advised the Applicants to take the route advised by Muriithi J in his ruling dated 16th November 2015, or settle their dispute with the Respondents in the Environment and Land Court or in the Court of Appeal.



8. In the course of considering this application I have perused the court record. I have also considered the application dated 2nd May, 2024 and the one dated 14th March, 2024 and find merit in the submissions that the same are *res judicata*.
9. The applications dated 2nd May 2024 and 14th March 2024 are a culmination of the ruling of Muriithi J delivered on 16th November 2015. In that ruling Muriithi J, dismissed Beth Mueni’s claim to the estate of the Respondent’s late father on ground that the claim was voided by the provisions of Sections 45(1) and 82 of the *Law of Succession Act* which prohibited intermeddling with the estate of deceased persons and voided agreements for sale of land before confirmation of Grant.
10. Being aggrieved with that ruling, Beth Mueni appealed to the Court of Appeal vide NBI Civil Appeal No. 140 of 2017 – *Beth Mueni v John Kinyanjui Gakunga* (unreported) but her appeal was dismissed. The Court of Appeal upheld the ruling of Muriithi J and held that Beth Mueni was not an Interested Party within the meaning of Section 76 of the *Law of Succession Act* as it had been established that the purported sale transaction between her and one of the heirs was void for want of consent from the Land Control Board and also that the purported transaction was void as the same was conducted by the beneficiaries before the letters of Administration were issued and confirmed. The Court of Appeal left the Appellant to seek a refund of the purchase price already paid from the respective beneficiaries.
11. The current application seeks an order for maintenance of the status quo pending hearing of the application dated 14th March 2024 which application is an attempt to re-open a case which has not only been determined by two (2) judges of concurrent jurisdiction with this court but also by the Court of Appeal.
12. This court cannot honour the invitation to sit on appeal against the judgments of Muriithi J, and the ruling of Muigai J and it is bound by the decision of the Court of Appeal. It would therefore be remiss of it to hear the applications. To do so would be tantamount to sitting on appeal against the decision of the Court of Appeal a jurisdiction it is not seized of.
13. Further, I fully agree with my predecessor Muigai J, that this “train has now departed the station” and it is time the Applicants look elsewhere as their incessant applications in this court, when the Court of Appeal has already pronounced itself on the case, is but an abuse of the process of court. In the premises the preliminary objection is upheld and like Muigai J, I proceed to dismiss the applications with costs to the Respondents.

Orders accordingly.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY THIS 30TH DAY OF APRIL, 2025.

E. M. MAINA

JUDGE

In the presence of:

Mr. Nzuva for 1st Admin & also

H/B for Kitheka for 2nd Admin

No appearance for George Kalu & Co.

Advocates for the Applicants

Miriam – Court Assistant

