



REPUBLIC OF KENYA



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In re Estate of Jotham Indiazi Mbogo (Deceased) (Miscellaneous Civil Application 4 of 2021) [2025] KEHC 5342 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5342 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
MISCELLANEOUS CIVIL APPLICATION 4 OF 2021**

AC MRIMA, J

APRIL 30, 2025

IN THE MATTER OF THE ESTATE OF JOTHAM INDIAZI MBOGO (DECEASED)

BETWEEN

RUTH MUREHANE INDIAZI 1ST APPLICANT

NANCY ALVITSA INDIAZI 2ND APPLICANT

AND

FRIDAH SAVAI INDIAZI RESPONDENT

RULING

Background:

1. In its Ruling of 17th December 2021, this Court disposed of two applications dated 23rd March 2021 and 21st April 2021 respectively and a preliminary objection dated 24th March 2021. In one of the applications, Ruth Murehane Indiazi & Nancy Alivitsa Indiazi, the Applicants herein, sought to have the Court find Fridah Savai Indiazi, their mother and the Respondent herein, in contempt of the Order that she surrenders vacant possession of 60 acres of land in I.R No. 409/219 or in the alternative, a monetary compensation of the value of the portion of the land.
2. In agreeing with the Applicants, the Court found the Respondent in contempt and accordingly fined her Kshs. 50,000/-. The Court also ordered her to allow the Applicants vacant possession of the 60 acres in the interim. As regards the alternative order of compensation, the Court, being unable to assess the value of the land, directed the Applicants to undertake a valuation of the lost income and same be an alternative remedy if vacant possession is not given within 30 days.
3. Pursuant to the foregoing, the Applicants then lodged an application by way of a Chamber Summons dated 9th February 2022 which is now the subject of this ruling. The application was vehemently opposed.



The Application:

4. The instant application supported by the Affidavit of Ruth Murehane Indiazzi deposed to on a similar date and sought the following Orders: -
 1. Spent
 2. That the Applicants be compensated as per the Court order issued on 17th December 2021 and the Report and valuation by the County Land Valuer, which amount stands at Kshs. 2,472,760/-.
 3. Costs be in the Cause.
5. In the grounds in support of the application, the Applicants stated that the Respondent, despite the Court orders of 17th December 2021, had denied them vacant possession. It was their case that the compensation due to them as per the Report and Valuation by the County Land Valuer was Kshs. 2,472,760/-. In urging the Court to allow the application, they asserted that they are likely to miss enjoying the fruits of the Ruling as well as their only source of their income from the land given to them by their father Jotham Indiazzi Mbogo, the deceased in this matter.
6. Through the supporting Affidavit, it was her deposition that the Applicants were each given a portion of 30 acres each out of 554 acres of land in the deceased's estate but their mother, the Respondent herein, and on of their brothers, had barred them from accessing and ploughing their respective portions. It was posited that they had conducted a valuation of the land and are to be compensated Kshs. 2,472,760/-.
7. It was also averred that the 2nd Applicant was unwell and in need of medical attention and without the income, her health is likely to deteriorate further.
8. The Applicants urged this Court to compensate them as per the valuation report by the County Land Valuer.

The Applicants' submissions:

9. In their written submissions dated 18th March 2022, the Applicants submitted that the Respondent never appealed nor applied to review the Ruling to date. As regards the minutes of the family gathering, it was their position that the issues discussed did not touch on what was brought before this Court. It was categorically stated that no resolution was passed in regard to giving vacant possession of the 60 acres to the two Applicants. It was their case that the Valuation Report has not been challenged or discredited in any manner and the Respondent has failed to give any cogent reasons why she cannot compensate the two Applicants.
10. Regarding computation of time, the Applicants submitted that it filed the instant application 34 days after the Ruling rendered on 17th December 2021 excluding the period of 21st December 2021 up to 13th January 2022 and as such it was not filed prematurely.
11. The Applicants urged the Court to allow the application.

The Respondent's case:

12. The Respondent challenged the application through her Replying Affidavit deposed to on 28th February 2022. It was her case that case that upon being appraised of the orders of the Court in the Ruling of 17th December 2021 by her Counsel, she, with all her daughters including the Applicants



herein, held a meeting with a view to giving each one of them their land. That, they, including the Applicants herein, signed the minutes accepting to be given 20 acres each as their inheritance in the interim and upon confirmation of grant of letters of administration.

13. She deposed that the foregoing interim mode of sharing was ratified on the 17th January 2022 when they had another meeting at Mr. Barongo's office, the Applicants' Advocate wherein the Respondent's Advocate was present and none of the Applicants herein raised any issues. On the strength of the foregoing, it was her case that it was misleading for the Applicants to suggest and allege that they have been barred from accessing and ploughing their alleged respective portions despite the Ruling of 17th December 2021.
14. Further, the Respondent deposed that on 25th January 2022, a Grant of Letters of Administration Intestate was issued in the estate of the deceased herein and on 26th January 2022, her Advocate proposed that focus be had in Succession No. 35 of 2021 to avoid this matter being sub-judice each other. To her utter shock and surprise, the Applicants refused the proposal and exactly 23 days of the order of 17th January 2021, the Applicants filed the instant cause seeking compensation. The Respondent deposed that, taking into consideration computation of time, according to the [*Civil Procedure Rules*](#), the instant application was brought prematurely and without the leave of Court.
15. It was further her case that there was concealment of material facts by the Applicants that on 8th February 2022, they made an application to this Court seeking orders inter-alia, that they (Applicants) be allowed to occupy and use 30 acres of land each out of the land parcel No. I.R 4090 and I.R. 219 measuring 500 acres any other parcel of land forming the estate of the deceased pending the distribution of the estate.
16. It was deposed that the Applicants cannot approbate and reprobate on their position and should either choose getting land or compensation. She further deposed that the estate will suffer double compensation if the Applicants are compensated and again get land in issue.
17. On the foregoing, the Respondent claimed that the application was devoid of merit and ought to be dismissed.

The Respondent's submissions:

18. The Respondent further urged her case further through written submissions dated 22nd March 2022. She identified the issues for determination as; when time starts running and when it ends for purposes of compliance with the ruling of 17th December 2021, whether there was compliance with the direction of the Court in respect of the Ruling dated 17th December 2021, and whether the instant application is sub-judice the application dated 8th February 2022.
19. On the first issue, it was submitted that, based on the provisions of Order 50 Rule 8 of the [*Civil Procedure Rules*](#) as read with the [*Judicature Act*](#), the computation of when time started to run, for purposes of compliance with the Orders of the Court of 17th December 2021 was a day after the Respondent became aware of the said directions on 15th January 2022 and the window ended on 13th February 2022. The Respondent submitted that there was no service of the either the decision of 17th December 2022 or the order therein and that she only came to know of it on 14th January 2021.
20. As to whether there was compliance with the direction of the Court issued in the Ruling of 17th December 2021, it was submitted that the on first day (that is the 15th January 2022) of the 30 days given by the Court, there was a successful meeting between the Applicants and the Respondent and other beneficiaries of the deceased on how the Applicants and their sisters would be accommodated pending final determination of the matter. That, there was a subsequent meeting on 17th January 2022 where



the issue of all the daughters getting 20 acres each was discussed and agreed as the best way forward. The Respondent then submitted that the claim that the Respondent had barred the Applicants from accessing the land in issue was unsubstantiated.

21. Resulting from the meetings and the agreement on mode of sharing, the Respondent submitted that she had complied with the directions of the Court and that there was no longer a basis for the claim of compensation, the alternative remedy of the Court.
22. Regarding the issue that the application was sub-judice the application dated 8th February 2022 in Succession Cause No. 35 of 2021, it was submitted that after the issuance of the directions by the Court on 17th December 2021, this Court issued to the 1st Applicant and the Respondent another Grant of letters of administration intestate on 25th February 2022 in Succession Cause No. 35 of 2022.
23. Besides the foregoing, it was submitted that on 8th February 2022, the Applicants filed another application seeking that they be allowed to occupy and use 30 acres out of the land in question herein and on the following day filed the instant application seeking compensation of Kshs. 2,472,760/-. The Respondent relied on the decision in *In Re Estate of M'imirongo M'uthaka (Deceased)* (2021) eKLR to demonstrate that a Court's obligation to comply with the sub-judice principle. In the case it was observed;

.... The sub-judice principle is meant to prevent courts of concurrent jurisdiction from contemporaneously entertaining trial of two parallel suits in respect of the same subject matter.
24. In conclusion, the Respondent proposed that this Court should find the instant application sub-judice the one dated 8th February 2022 in Succession Cause No. 35 of 2021 and in the end a finding be made that there is no merit in the instant application and it be dismissed with costs.

Analysis:

25. On a careful consideration of the application, the submissions and the decisions referred to by the parties, one of the issues for determination in this matter is whether the instant application is sub-judice the one dated 8th February 2022 in Succession Cause No. 35 of 2021. For this Court to appropriately determine that issue, it needs to interrogate the nature and content of the application dated 8th February 2022 which was filed in Succession Cause No. 35 of 2021. As matters stand, yours truly is no longer serving in Kitale station and as such it becomes a challenge to deal with this issue. Needless to say, in the event the issue is resolved in the affirmative, then the instant application shall accordingly collapse.
26. Having said so, this Court has also had the occasion of dealing with Succession Cause No. 35 of 2021 and recalls that there are running orders staying any further proceedings as to accord time for the resolution of a case filed before the Environment and Land Court seeking inter alia a determination as to whether where the deceased was entitled to 554 acres of land or less.
27. As the orders sought to be enforced through the instant application were issued on the basis that the deceased owned 554 acres of land, and as the matters now stand, that issue is still under litigation, and without saying more, such state of affairs, no doubt, has a bearing to the instant application. However, that will have to be determined once the instant application survives the ambush on sub-judice.
28. As I come to the end of this ruling, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi, I have been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal



investigating the conduct of a Judge in March 2024 and later elected to the Judicial Service Commission thereby mostly being away from the station. Apologies galore.

29. The upshot is, therefore, that the following orders do hereby issue:

- a. The Ruling in respect of the Chamber Summons dated 9th February 2022 is hereby postponed.
- b. The parties herein shall appear before the Presiding Judge, on a date to issue, where the Court file in Succession Cause No. 35 of 2021 shall be availed and the Court shall further deal with the matter more so since the instant application was heard by way of written submissions.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF APRIL, 2025.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Mr. Barongo, Learned Counsel for the Applicant.

Amina, Court Assistant.

