



**In re Estate of Kibaya Muriuki (Deceased) (Succession Cause
870 of 2015) [2025] KEHC 5215 (KLR) (28 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5215 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 870 OF 2015**

DKN MAGARE, J

APRIL 28, 2025

IN THE MATTER OF THE ESTATE OF KIBAYA MURIUKI (DECEASED)

BETWEEN

MERCY WANJIRU NYAMU PETITIONER

AND

MICHAEL KAMAU MWANGI PROTESTOR

RULING

1. This Ruling is in respect of the Protest dated 14.1.2019 and filed by Michael Kamau Mwangi. The substance of the Protest is that the Protestor claimed a purchaser's interest in the estate of the deceased.
2. The Petitioner opposed the Protest. The petitioner maintained that the Protestor was out to defraud the deceased, as there was no document showing the correct description of the property. In the sale agreement, the property is described as Lower Muhito Ngamwa Plot No. 118, while the certificate of search describes the property as Lower Muhito/Ngamwa/118. The challenge to the Protest is, however, by way of submissions. The submissions are dated 11.11.2022 and do not refer to any authorities. As stated by the Court of Appeal in Daniel Toroitich Arap Moi vs. Mwangi Stephen Muriithi & Another [2014] eKLR:

“Submissions cannot take the place of evidence. The 1st respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties' “marketing language”, each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed there are many cases decided without hearing submissions but based only on evidence presented.”



3. The Protestor also filed submissions dated 19.10.2022. It was submitted that the Protestor held a valid purchaser's interest in the property. Reliance was placed on Section 93 of the [Law of Succession Act](#) to buttress the argument that the Protestor was a valid purchaser of the property. The Protestor also cited Davidson Mwangi Kagiri (2014) eKLR to submit that justice in this case demanded that a constructive trust and proprietary estoppel should apply to stop the Petitioner from retaining the property when the Protestor had paid the purchase price.
4. The Petitioner filed this petition on 25.11.2015, stating that the deceased left behind land parcel number Lower Muhito/Ngamwa/118. The deceased died without children. The dependents were indicated to be a step-sister and a sister-in-law, Mercy Wanjiru Nyamu and Wahito Karega Kibocho.
5. The deceased's parcel of land was sold to the protestor by the deceased on 2.12.2014. The said sale was subject to specific terms. It appears that the deceased died soon thereafter on 14.2.2015. This court granted letters of administration to Mercy Wanjiru Nyamu on 2.5.2016. Earlier on 7.7.2015, a caution was filed by Wahito Karega Kibocho. It is not a usual caution when a deceased person is dead. The Protestor filed a caution on 23.7.2015.
6. The protest raised issues related to the description of the properties. The same is a nonstarter, as nothing in the description leads a party to believe that the deceased was selling a different parcel. The only question is whether this court can determine the issue of the purchaser's interest.
7. There is a consent of the Land Control Board issued on 10.6.2015. The deceased died on 14.7.2015, after the consent was obtained. All indications were that this property was not the free property of the deceased. However, only one court can determine that issue.
8. Armed with the said Ruling of this court, the Protestor appears to seek to be included in the process leading to the confirmation of the grant as a person with a purchaser's interest in the estate of the deceased. I must discern whether I have jurisdiction to do what the Protestor pleads herein. The jurisdiction of this court is circumscribed under Article 165(3) of [the Constitution](#) of Kenya, which posits as follows: -
 - (3) Subject to clause (5), the High Court shall have-
 - (a) unlimited original jurisdiction in criminal and civil matters;
 - (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
 - (c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
9. On the jurisdiction of this court on claims by parties of interest to the estate of the deceased other than beneficiaries and dependents, I do no more than reproduce in detail the disposition by Musyoka J, in re Estate of Andashe Munyeti (Deceased) [2021] eKLR as follows:
 5. After a grant is confirmed, and a certificate of confirmation of grant is processed and issued, the next step would be transmission of the property in accordance with the distribution in the certificate of confirmation of grant. Transmission is not a process under the [Law of Succession Act](#), Cap 160, Laws of Kenya. The [Law of Succession Act](#) does not provide for it. Indeed, the term transmission is not even mentioned in the Act. It is a process which is provided for in the [Land Registration Act](#), No. 3 of 2012, and the [Land Act](#), No. 6 of 2012. The process has nothing to do with the succession process. The effect of it is that once the court confirms a



grant, and issues a certificate of confirmation of grant, its work would be over. The parties ought to move to the next step, of execution of the confirmation orders, which happens at the land registries and at the offices of other land authorities. The application that has been placed before me dwells on matters that have nothing to do with succession, but registration of land, and the parties are better of addressing the issues to the relevant land bodies.

The promulgation of *the Constitution*, 2010, on 27th August 2010, had one critical consequence, the taking away of jurisdiction from the High Court, with respect to matters relating to land. That comes out very clearly from Articles 162(2) and 165(5) of *the Constitution*. Parliament passed a law that established the Environment and Land Court. The *Land Registration Act* and the *Land Act*, which govern transmission and land registration, carry provisions that make it clear that where disputes or questions or the need for certain actions arise, with respect to issues that are regulated or governed by the two statutes, such as transmission and land registration, then the court to address them is the Environment and Land Court and any subordinate court vested with jurisdiction. These provisions are in sections 2 and 101 of the *Land Registration Act* and sections 2 and 150 of the *Land Act*

10. The Court must act within its constitutional limits. In the case of Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR, the supreme court stated as doth: -

“This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where *the Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

11. The court must therefore assume jurisdiction where it has and eschew usurping jurisdiction where none exists. The court, having found that the purchaser’s interest was prima facie shown, the protest succeeds to the extent only that the court cannot confirm the grant, with evidence of sale being patent on the record. The parties must then settle the dispute about whether the land belonged to the deceased or had already been sold. Having found as I have, the best I can do is to stay in this cause. The Protestor must thereafter, within 6 months, move the land court, as the appropriate court, to determine the issues raised in the matter. The court will give a date for mention to track the progress of the land matter.
12. Failing the filing of a suit on this issue, the court will proceed to confirm the grant without the protestor.
13. The Court of Appeal in the case of Farah Awad Gullet v CMC Motors Group Limited [2018] KECA 158 (KLR) had this to say:

It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.



14. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of *Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others*, SC Petition No. 4 of 2012; [2014] eKLR, as follows: -

“(18) It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, before, during, and subsequent to the actual process of litigation.... Although there is eminent good sense in the basic rule of costs– that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered opinions of this Court in other cases.

15. Given that the protest was allowed partly, each party is to bear their own costs.

Determination

16. In the circumstances, the court makes the following order:

- i. The protest is partly allowed.
- ii. The interest of the protestor in the suit land is not idle. The ownership must be determined before the grant is confirmed.
- iii. Therefore, the cause herein is to stay for 6 months to allow the protestor to move the Environment and Land Court to determine the title to and the ownership of land parcel number Lower Muhito/Ngamwa/118, measuring 5.8 acres.
- iv. The judgment of the Environment and Land Court will give direction on the state of the estate.
- v. Failure to file suit in the Environment and Land Court means the protest will stand dismissed by 29.10.2025.
- vi. Each party to bear their own costs.
- vii. Directions to be given upon delivery of this ruling.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 28TH DAY OF APRIL, 2025. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

Represented by:

M. K. Kiminda Advocates for the Petitioner

K. Kivuva & Associates Advocates for the Protestor



Court Assistant – Michael

M. D. KIZITO, J.

