



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. E067 OF 2022

IN THE MATTER OF THE ESTATE OF SALOME MUGURE

KAMUNYU (DECEASED)

TERESIA WANJIKU KARANJA.....

APPLICANT

VERSUS

JOHN CHEGE KAMUYU..... ADMINISTRATOR/1ST

RESPONDENT

KAMUNYU MUOHI..... ADMINISTRATOR/2ND

RESPONDENT

MARY WANJIRU NJOROGE..... 3RD

RESPONDENT

RULING

1. This ruling relates to the two applications dated **29th January, 2025** and **13th February 2024** filed by the applicant, **Teresia Wanjiku Karanja**. The application dated 29th January 2025 seeks **ORDERS THAT:-**

1) ***Spent.***

2) **Proceedings in ELC 38 of 2024 and the application dated 19th December, 2024 be stayed pending the hearing and determination of the application dated 13th January, 2024.**

- 3) **An order of status quo does issue to preserve the property known as RUIRU/RUIRU EAST BLOCK 2/2612 and its subdivisions 45283 - 45285.**
 - 4) **An order of injunction does issue, against the Respondents or any persons claiming under them from evicting the applicant, disposing of, or in any way interfering with the said property pending the hearing and determination of the application.**
 - 5) **The application dated 13th February, 2024 be heard on priority basis.**
 - 6) **Costs of this application be in the cause.**
2. The application is based on the grounds on its face thereof and supported by affidavit sworn by Teresia Wanjiku Karanja on **29th January, 2025.**
 3. She avers *inter alia* that she currently lives on L.R. No. **RUIRU/RUIRU EAST BLOCK 2/2612**, which was gifted to her and her son - both beneficiaries - by the deceased, her mother-in-law. The Respondents, who are also beneficiaries and administrators of the estate, are seeking her eviction and the removal of a caution on the land through a pending case (ELC 38 of 2024) in the Ruiru Chief Magistrate's Court.
 4. That buyers in that case claim to have purchased the plots from the Respondents. However, the property had already been given to her and her son by the deceased, but the succession case wrongfully transferred ownership solely to the Respondents. She has lived on the land since 1992, is elderly, and has built permanent structures there.

5. The Respondents have now subdivided the land into parcels 45283–45285 and are attempting to sell it, which could force her and her family out. She argues that without court intervention, she faces irreversible harm, including losing her home. She requests the court to preserve the property and reinstate the caution until the matter is resolved.
6. The application is opposed vide replying affidavit sworn by John Chege Karanja on **20th February, 2025**.
7. He avers *inter alia* that the 2nd respondent, who was the applicant's brother, is now deceased and therefore cannot be sued. The applicant previously filed two suits at the Ruiru Magistrate's Court - ELC No. E020 of 2022 and ELC No. E038 of 2024 - where the court affirmed that the property in question belongs to John Chege Kamunyu, the 1st respondent herein. The applicant's proper recourse would be to appeal those decisions, not to bring this new application.
8. A succession case (Thika Magistrate's Court Succession Cause No. 239 of 2009) was concluded with the applicant's knowledge, and a grant of letters of administration was issued without any objection from her. The Respondent has since sold the property to third parties who further subdivided and resold it, with the applicants fully knowledge.
9. He said that the application to revoke the grant, dated **13th February 2024**, was never served upon him. Maintaining the current legal position would mean allowing the current

property owners to continue exercising their constitutional rights. That the applicant's claim of having received the land as a gift is invalid because it was never transferred to her during the donor's lifetime. Granting the application would cause serious and irreversible harm to the respondent and current property owners.

10. The applicant has filed written submissions dated **28th April, 2025** placing reliance on the following:

a. **In re Estate of Julius Ndubi Javan (Deceased) [2018] eKLR** where the court opined as follows:

“But of relevance in these proceedings is that such material facts were never disclosed to this court during confirmation of the grant so as to enable the court make an informed decision on distribution of the estate. Needless to state that, in any judicial proceedings, parties must make full disclosures to the court of all material facts to the case including succession cases. This general rule of law emphasized utmost good faith (uberimaefidei) from parties who take out or are subject of the court proceedings. The said responsibility is part of justice itself. Accordingly, non - disclosure of material facts undermines justice and introduces festering waters into the pure streams of justice; such must, immediately be subjected to serious reverse osmosis to purify

the streams of justice, if society is to be accordingly regulated by law."

11. The Respondent has not filed written submissions.
12. The application dated **13th February, 2024**, filed by Teresia Wanjiku Karanja - the applicant herein, seeks for

ORDERS THAT:

- 1) ***Spent.***
- 2) **An injunction does issue restraining the 1st Respondent and any person claiming under them from dealing in any manner with the estate of the deceased and the property known as Ruiru/Ruiru East Block 2/2612 45283 - 45285 and the said titled be deposited in court.**
- 3) **The grant of letters of administration to John Chege Kamuyu and Kamuyu Muohi be revoked and or annulled.**
- 4) **The certificate of confirmation issued to John Chege Kamuyu and Kamuyu Muohi revoked and or annulled.**
- 5) **Costs for this application be provided for.**
- 13) The application is based on the grounds on its face thereof and supported by affidavit sworn by Teresia Wanjiku Karanja on 13th February, 2024.
- 14) She avers *inter alia* that she recently learned that a grant and its confirmation were issued in favor of John Chege Kamuyu and Kamuyu Muohi, distributing the land parcel **Ruiru/Ruiru East Block 2/2612** to various beneficiaries.

She asserts this was done fraudulently and without her knowledge, despite a valid caution being placed on the property due to prior attempts by John Chege Kamuyu (her husband and administrator) to dispose of it without informing the rest of the family.

- 15) She maintains that she and her son, Cosmas Waweru Chege, are rightful beneficiaries of the estate, having been gifted the land by the deceased and her husband in 1991. A written agreement from a family dispute resolution confirms the 1-acre plot was to be divided as follows: $\frac{1}{2}$ acre to Cosmas, $\frac{1}{4}$ acre to herself and $\frac{1}{4}$ acre to John Chege Kamuyu.
- 16) The agreement is signed by the involved parties and witnessed by local elders. They have lived on the land since 1992, built permanent homes and only recently discovered the succession proceedings after beacons were installed, triggering a dispute with a surveyor. She argues the grant was acquired by misrepresentation and requests its revocation, stressing that the land is now being illegally subdivided and sold. There have also been violent attempts to evict her and destroy her home and property, halted only through police intervention. She insists all dependents are entitled to a fair share and that she should be heard in court to assert her long-standing and legally supported claim.
- 17) The application dated **13th February, 2024** is not opposed and there are not written submissions filed on it.

Analysis And Determination

18) In **Landmark Holdings Limited v Boleyn Magic Wall Panel Limited & another (Civil Appeal E003 of 2023) [2024] KEHC 646 (KLR) (19 January 2024) (Ruling)** the court held as follows:

“29. It is not in doubt that this Court has powers to stay proceedings pending appeal and this jurisdiction is derived from both Order 42 rule 6 of the Civil Procedure Rules as well the inherent jurisdiction reserved in section 3A of the [Civil Procedure Act](#).

30. In the case of Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000, Ringera J stated “As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not

whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously” (emphasis added)

31.The only issue necessary for determination would be whether the application seeking stay of proceedings is merited. This Court’s discretion in deciding whether or not to grant stay of proceedings as sought in this application must be guided by any of the following three main principles; a) Whether the applicant has established that he/she has a prima facie arguable case. b) Whether the application was filed expeditiously and c) Whether the applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.”

19. **In re Estate of Godana Songoro Guyo (Deceased) [2020] eKLR** the court pronounced itself as follows:

“If indeed the deceased had indeed bequeathed some of his assets to some of his beneficiaries by way of gift inter vivos or causa mortis, the court will be compelled to honour the wishes of the deceased. Section 42 of the Law of Succession Act provides that:

42. Where-

(a) an intestate has, during his lifetime or by will paid, given or settled any property for or the benefit of a child, grandchild or house; or taken had he not predeceased the intestate. That property shall be taken into account in determining the share of the set intestate estate finally, accruing to the What is the requirement of law as far as a gift inter vivos is concerned? I find useful guidance in Nyamweya J in her decision in the case of Re Estate of the Late Gedion Manthi Nzioka (Deceased) [2015] eKLR, where she stated as follows:

“In law, gifts are of two types. There are the gifts made between living persons (gifts inter vivos), and gifts made in contemplation of death (gifts mortis causa). Section 31 of the Law of Succession Act provides as follows with respect to gifts made in contemplation of death:

...For gifts inter vivos, the requirements of law are that the said gift may be granted by deed, an instrument in writing or by delivery, by way of a declaration of trust by the donor, or by way of resulting trusts or the presumption of Gifts of land must be by way of registered transfer, or if

the land is not registered it must be in writing or by a declaration of trust in writing. Gifts inter vivos must be complete for the same to be valid.”?

In Halsburys? Laws of England? 4th Edition Volume 20(1) at paragraph 67 it is stated as follows with respect to incomplete gifts?

“Where a gift rests merely in promise, whether written or oral, or in unfulfilled intention, it is incomplete and imperfect, and the court will not compel the intending donor, or those claiming under him, to complete and perfect it, except in circumstances where the donor’s subsequent conduct gives the donee a right to enforce the promise. A promise made by deed is however, binding even though it is made without consideration. If a gift is to be valid the donor must have done everything which according to the nature of the property comprised in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do.”

It may be noted that the concept of gifts is divided into two categories. First gifts intervivos and gifts causa mortis. Gifts intervivos as

contemplated in the Law of Succession are such that the owner of the property or asset donates it to another without expectation of death. In any event the person who makes such a gift must have the capacity and competency to gift the property and the gift must be perfected...”

20. Looking at the facts as raised by the rival parties and in light of the above cited authorities one can easily conclude that the applicant has some case in respect to the estate herein. I have for instance perused a handwritten agreement between the parties dated 9th January 2012 before the area chief Ituru location. All the parties including the Respondent agreed that the Applicant and other interested parties had a share in land parcel number Ruiru/Ruiru East Block 2/2612.
21. If that was the case and in view of the uncontroverted fact that the applicant has been on the land since the year 1992, I think it is only fair to give her a chance to defend her cause. I state so because despite the civil suits which may have been held elsewhere the genesis of her claim over the suit land is bequest and not purchase. It means therefore that her rights over the suit land can only be determined by way of succession proceedings.
22. In any case there is no evidence that a competent court of law has issued eviction order against the Applicant. All that the courts have done have decided on whether a caution

was valid or not. The real substantive issue of the Applicants as well as the Respondent's rights over the estate was yet to be determined.

23. Obviously other evidence including what may have transpired at the other courts may be raised during the substantive hearing of the cause.
24. The rights of the Respondent as well as purchasers, if any, will still be considered but first the real inheritors must be sorted out.
25. I think I have stated much to indicate that I do find merit in the applications. There is nothing lost on the part of the Respondent since he will have time as well to challenge the Applicant's position.
26. This is a matter therefore which must be heard in full and by way of oral evidence so that the real issues can come out.
27. The applications are cumulatively allowed as follows:-
 - (a) There be stay of execution of the grant issued to the Applicant on 18th August 2010 vide Thika Succession Cause No. 239 of 2009 and any resultant consequences pending the hearing and determination of the application for revocation of grant dated 13th February 2024.

- (b) The above application for revocation of grant be heard by way of oral evidence where the Applicant shall be the Plaintiff and the Respondent the Defendant.
- (c) The parties are each granted 30 days to file and serve each other with witness statements and affidavits if any.
- (d) Pending the hearing and determination of this cause there be
stay of sale, transfer, or subdivisions of parcel number Ruiru/Ruiru East Block 2/2612 or the resultant titles namely Ruiru/Ruiru East Block 2/45283-45285.
- (e) There be stay of any eviction harassment or in any way dealing with the Applicants, Teresa Wanjiku Karanja occupation of the aforestated parcel(s) of land pending the hearing and determination of this cause.
- (f) Costs shall await the outcome of the cause.

**Dated signed and delivered via video link at Nairobi
this 29th day of May 2025.**

**H K CHEMITEI
JUDGE**