



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Muchendu Bongwe (Deceased) (Probate & Administration
863 of 2008) [2025] KEHC 11876 (KLR) (Family) (7 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11876 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

PROBATE & ADMINISTRATION 863 OF 2008

H NAMISI, J

AUGUST 7, 2025

IN THE MATTER OF THE ESTATE OF MUCHENDU BONGWE (DECEASED)

BETWEEN

JAMES MWAGANU MWANGI 1ST APPLICANT

JUDITH WANJIRU MWAGANU 2ND APPLICANT

AND

PETER KAMUNYU MUCHENDU RESPONDENT

AND

RAFIKI MICROFINANCE BANK INTERESTED PARTY

RULING

1. The Deceased passed away on 11 December 1988. Grant of Letters of Administration Intestate were issued on 16 September 2010 to Peter Kamunyu Muchendu, the Respondent herein and subsequently confirmed on 21 February 2011.
2. The Applicants filed the Notice of Motion dated 22 May 2025 seeking the following orders:
 - i. Spent
 - ii. That the Honourable Court be pleased to issue an order compelling Rafiki Microfinance Bank Ltd to forthwith release the original title deed for LR No Muguga/Jet Scheme/3937, to the Applicants;



- iii. That this Honourable Court do issue an order declaring that the Applicants are the rightful and beneficial owners of LR No Muguga/Jet Scheme/3937 being held in the custody of the Interested Party herein;
 - iv. That the costs of the Application be provided for.
3. In the Supporting Affidavit, the Applicants aver the property was the subject of rigorous litigation, which culminated with a decision rendered by Hon. Justice Muigai on 30 April 2015. In her decision, the Learned Judge declared the Applicants herein to be bona fide purchasers of the subject property and gave the go ahead for the Applicants to conclude the sale transaction.
 4. The Applicants further aver that on 7 October 2015, Hon. Justice Muigai ordered the Land Registrar, Kiambu County, to revoke the title deed for the subject property in the name of the Peter Kamunyu Muchendu and John Njoroge Muchendu in trust for Samuel Nyutu. Instead, Peter Kamunyu Muchendu and John Njoroge Muchendu charged the title to Rafiki Microfinance Bank Ltd, the Interested Party, for a sum of Kshs 700,000/=. The Applicants aver that they were forced to pay Kshs 130,000/= to the Interested Party, in a bid to have the title released. The loan has since been cleared and the Applicants wish to have the title released to them.
 5. The Respondent did not participate in these proceedings, despite being served.
 6. The Interested Party filed a Replying Affidavit sworn on 3 June 2025. The gist of the response is that the Interested Party is not opposed to releasing the title deed. They aver that on 14 August 2023, the loan amount was repaid in full and the Interested Party's stake and interest in the property was extinguished. They contend that upon repayment of a loan, it is incumbent upon the Chargor to collect the original title document and an executed Discharge of Charge from the financial institution for registration of the Discharge of Charge.
 7. The Interested Party avers that in the instant case, the Chargors, Peter Kamunyu Muchendu and John Njoroge Muchendu, have not approached the Bank with a view of collecting the title document. They aver that in the absence of express orders from the Court, the Interested party cannot release the title to persons who are not the Chargors. The Interested Party cited the Supreme Court case of *Communications Commission of Kenya & 4 Others -vs- Royal Media Services & 7 others* .
 8. I have read the Application and the response. I have also read the Ruling of this Court rendered on 30 April 2015 by Hon. Justice W. Muigai. In the circumstances, the Application is merited. I allow the Application and further order that the Interested Party be struck out of these proceedings.
 9. Each party shall bear their own costs.

DATED AND DELIVERED AT NAIROBI THIS 7 DAY OF AUGUST 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Applicants: Mrs. Morara

Respondent: N/A

Interested Party: Mr. Ndichu

Court Assistant: Lucy Mwangi

