



**In re Estate of Robert mutua Angaine (Deceased) (Succession Cause 106 of 2008) [2024] KEHC 1677 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1677 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 106 OF 2008  
TW CHERERE, J  
FEBRUARY 22, 2024  
IN THE MATTER OF THE ESTATE OF ROBERT MUTUA ANGAINE  
(DECEASED)  
AND  
IN THE MATTER OF SUMMONS DATED 08<sup>TH</sup> AUGUST, 2023  
FOR RESTRAINING ORDERS  
AND  
IN THE MATTER OF SUMMONS DATED 21<sup>ST</sup> SEPTEMBER, 2023  
FOR ENFORCING COMPLIANCE WITH COURT ORDERS**

**BETWEEN**

**JOHN KIRIMI MUTUA ..... 1<sup>ST</sup> ADMINISTRATOR**

**DOREEN TERRY KARIMI MUTUA ..... 2<sup>ND</sup> ADMINISTRATOR**

**AND**

**RUTH KATHAMBI MUTUA ..... RESPONDENT**

**RULING**

**Introduction**

1. On 25<sup>th</sup> August, 2020, Ong’ijo J. made the following orders:
  1. The confirmed grant be rectified to correct the errors of description of the properties as follows:
    - a. Mjini Nubian Village/590 to read Meru Municipality Block II/933



- b. Timau/Ngusishi/583,585,586 and 588 to read Ngusishi Settlement Scheme/583,585,586 and 588
  - c. Abogeta/Nkachi/431 to read Abogeta/Nkachie/431.
  - d. Naari/Maitai/148 to read Kiirua/Naari/Maitai/148.
  - e. Ex-lewa/595 Timau at Kariba to read Ex-lewa/Settlement Scheme/595.
2. Authority is hereby granted for the sale of properties known Nairobi Block 82/1662 and Meru Municipality Block II/933 to cater for administration and distribution expenses and the balance of the proceeds be share equally among the 9 beneficiaries.
  3. Land parcel Numbers Ngusishi/Settlement Scheme/583,585/586 and 588 be amalgamated into one parcel and subsequently shared equally among the 9 beneficiaries.
  4. All cautions registered against the estate properties are hereby lifted.
  5. There be no order as to costs.
2. A Further Rectified Certificate of Confirmation of Grant incorporating the foregoing orders was issued on 22<sup>nd</sup> July, 2020.

**Summons dated 08<sup>th</sup> August, 2023**

3. By Summons dated 08<sup>th</sup> August, 2023, John Kirimi Mutua and Doreen Terry Karimi Mutua (Administrators/Applicants) seek orders:
  1. Ruth Kathambi Mutua (Respondent), her agents or servants be restrained from interfering with the sale of Nairobi Block 82/1662 as ordered by the court on 22<sup>nd</sup> July, 2020
  2. The Respondent be ordered to render accounts of all rents collected from Nairobi Block 82/1662 from 22<sup>nd</sup> July, 2020 to date
  3. Costs be provided for

**Summons dated 21<sup>st</sup> September, 2023**

4. By Summons dated 21<sup>st</sup> September, 2023, John Kirimi Mutua and Doreen Terry Karimi Mutua (Administrators/Applicants) seek orders:
  1. Ruth Kathambi Mutua (Respondent), her tenants, agents or servants be surrender vacant possession of Nairobi Block 82/to enable compliance with the court orders issued on 22<sup>nd</sup> July, 2020
  2. Costs be borne by the Respondent
5. Both summons are based mainly on the ground that Applicants have secured a buyer of Nairobi Block 82/1662 who has paid a deposit of KES. 5 million but are unable to complete the sale due to interference from the Respondent who has denied the buyer access to the property. Application is also based on the ground that Respondent is interfering with the sale for the reason that she continues to receive monthly rent of KES. 100,000/- from Nairobi Block 82/1662.
6. The summons is supported by 1<sup>st</sup> Administrator/Applicant's affidavits sworn on 08<sup>th</sup> August, 2023 and 21<sup>st</sup> September, 2023 in which she reiterates the grounds on the face of the summons.



7. By her undated replying affidavit filed on 24<sup>th</sup> November, 2023, Respondent denies interfering with the sale of Nairobi Block 82/1662 or denying the buyer access to the said property. Respondent avers that Applicants had approached her to purchase the said property and was surprised that it had been sold off without her knowledge. Concerning accounts from rents paid from the said property, Respondent avers she collects KES. 53,000/- monthly which is used to pay her son's school fees.
8. In a rejoinder contained in a supplementary affidavit sworn on 21<sup>st</sup> December, 2023, 2<sup>nd</sup> Administrator/Applicant denies that Respondent offered to purchase the asset in issue. She contends that it the deposit of sale that has enabled partial distribution of the estate and Respondent who has already received title to her share is being untruthful in her denial that she is unaware of the sale. 2<sup>nd</sup> Administrator/Applicant further contends that Respondent has a duty to account for whatever amount she has collected from the asset in issue.

### **Analysis and Determination**

9. I have considered the summons in the light of the affidavits on record, the previous court orders and submissions filed on behalf of the Applicants and on behalf of the Respondent.
2. In the case of *MN v Tan & Another* [2015] eKLR the court held as follows: -

“A valid court order has to be obeyed or complied with regardless of how aggrieved a party is about it. The order has the force of law. It is not a mere wish or proposition. Disobedience or non-compliance with it attracts severe consequences”.
10. And in the case of *Teachers Service Commission v Kenya National Union of Teachers 2 others* [2013] eKLR, the court held that: -

“A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.”
11. There is no doubt that the orders issued on 22<sup>nd</sup> July, 2020 directing that Nairobi Block 82/1662 remains unexecuted. Other than her word that Respondent has been interfering with the sale of the said property, no evidence either by way of a demand letter or penal notice served on the Respondent was exhibited to demonstrate that her compliance with the court order dated 22<sup>nd</sup> July, 2020 had been demanded and disobeyed.
12. The foregoing notwithstanding, it is worth noting that the Respondent Nairobi Block 82/1662 and her tenants are still in occupation 4 years after the order of sale of the asset was made which renders delivery of vacant to the buyer unattainable. The the 4-year delay in executing the court orders is worth the court's concern for the reason that the court does not, and ought not to be seen to make orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people. (See *B v Attorney General* [2004] 1 KLR 431).
13. Concerning Respondent's desire to purchase the property in issue which is denied by the 2<sup>nd</sup> Respondent, the Respondent did not avail before the court any evidence in the form of an offer to purchase the said property.



14. Concerning accounts, I am in agreement with the Applicants that the Respondent is under a duty to render accounts for whatever amount that she has collected from the suit property from 22<sup>nd</sup> July, 2020 when the order concerning its distribution was made.
15. In the interest of justice to all parties concerned and in order to uphold the dignity of the court, summons dated 08<sup>th</sup> August, 2023 and 21<sup>st</sup> September, 2023 are allowed and it is hereby ordered that:
  1. Ruth Kathambi Mutua (Respondent), her tenants, agents or servants are directed to surrender vacant possession of Nairobi Block 82/1662 to the Applicants not later than 29<sup>th</sup> February, 2024 to enable compliance with the court orders issued on 22<sup>nd</sup> July, 2020
  2. Ruth Kathambi Mutua (Respondent), her agents or servants are hereby restrained from interfering with the sale of Nairobi Block 82/1662
  3. The Respondent is hereby directed to render accounts of all rents collected from Nairobi Block 82/1662 from 22<sup>nd</sup> July, 2020 to date and to file and serve the said accounts on the Applicants within 30 days from today's date
  4. Upon completion of the sale, the Administrators/Applicants shall render accounts, file and serve the said accounts on all beneficiaries within 30 days of the sale
  5. Mention on 29<sup>th</sup> April, 2024 to confirm compliance with these orders and transmission of the estate to the respective beneficiaries
  6. Costs shall be in the cause

**DATED AT MERU THIS 22ND DAY OF FEBRUARY 2024**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Kinoti/Munene

For Applicants - Mr. Kariuki for Mithega & Kariuki Advocates

For Respondent - Ms. Onyango for G.M.Wanjohi & Mutuma & Co. Advocates

