



**In re Estate of Andrea M’ikiugu (Deceased) (Succession Cause 23 of 2005) [2024] KEHC 1681 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1681 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 23 OF 2005  
TW CHERERE, J  
FEBRUARY 22, 2024**

**BETWEEN**

**JUDAH KIUMBE ..... 1<sup>ST</sup> ADMINISTRATOR**

**TERESIA KANYUAERA THIURU ..... 2<sup>ND</sup> ADMINISTRATOR**

**AND**

**REBECCA NAITORE M’TIRIMANIA ..... 1<sup>ST</sup> BENEFICIARY**

**RAEL MWARI JASON ..... 2<sup>ND</sup> BENEFICIARY**

**JOYCE KANANU KABURIA ..... 3<sup>RD</sup> BENEFICIARY**

**RULING**

1. By summons dated 11<sup>th</sup> October, 2023, Teresia Kanyuaera Thiuru (2<sup>nd</sup> administrator/Applicant) Seeks The Following Orders:That
  1. ....Spent
  2. .... Spent
  3. ....Spent
  4. ....Spent
  5. ....Spent
  6. This Honourable Court be pleased to make a declaration that by causing subdivision of L.R NO. Kiirua/Naari/527, the Respondents are in contempt of court orders issued on 06<sup>th</sup> July, 2022
  7. ....Spent



8. This Honourable Court be pleased to issue orders directing the Registrar of Lands Meru to remove to this court all the documents presented to them for subdivision of L.R No. Kiirua/Naari/527
  9. This Honourable Court be pleased to issue orders directing the Registrar of Lands Meru to restore the original title L.R NO. Kiirua/Naari/527 and cancel subdivisions namely L.R NO. Kiirua/Naari/7014, 7015, 7016, 7017, 7018 and to 7019
  10. ....spent
  11. ....spent
  12. Costs be provided for
2. The summons is based on the grounds among others that the distribution of L.R NO. Kiirua/Naari/527 was erroneous and that Applicant did not participate in the application dated 10<sup>th</sup> February, 2022 and in the proceedings for confirmation of the grant.
  3. The summons is further supported by an undated affidavit sworn by the Applicant in which she reiterates the grounds on the face of the application and additionally avers that she has been ailing and has only recently discovered that LR NO. Kiirua/Naari/527 has been subdivided and transferred after her son filed Meru Chief Magistrates Court ELC No. E019 of 2023.
  4. Judah Kiumbe (1<sup>st</sup> Administrator/by his affidavit sworn on 21<sup>st</sup> November, 2023 supported the summons on the grounds that inspite of the 2<sup>nd</sup> to 4<sup>th</sup> Respondent adducing evidence that the deceased wished that his estate be distributed only to his three sons, the court by an order dated 14<sup>th</sup> October, 2021 erroneously distributed the estates to deceased's daughters also.
  5. Dennis Kiogora Thiuru (4<sup>th</sup> Respondent) opposed the summons on the grounds that it was filed to defeat Meru Chief Magistrates Court ELC No. E019 of 2023 which the 5<sup>th</sup> Respondent filed after Applicant chased him away from his late father's share of the estate that was distributed to Applicant on her behalf and her children including the 5<sup>th</sup> Respondent herein.
  6. Catherine Ntinyari Kimathi d/o Damaris Kanoti Mathiu, deceased daughter of the deceased herein and Rael Mwari Jason and Joyce Kananu (daughters of the deceased herein), the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents herein by their respective affidavits sworn on 27<sup>th</sup> November, 2023 opposed the summons on the grounds that Applicant already benefit from the full share of her later husband's share of the estate has brought this application in bad faith.
  7. By her supplementary affidavit, sworn on 11<sup>th</sup> December, 2023, Applicant accuses the Respondents of colluding to obtain court orders without giving her a hearing.

### **Analysis and Determination**

8. I have considered the summons in the light of the affidavits on record and submissions and authorities filed on behalf Applicant and Respondents.
9. To begin with, prayers 1, 2 and 3 were already granted and are therefore spent. Prayers 4, 5, 10 and 11 were sought pending interpartes hearing of the application and are therefore also spent.
10. What therefore remains for determination prayer numbers 6, 8, 9 and 12 which I shall address as hereunder.



**Whether by causing subdivision of L.R No. Kiirua/Naari/527, the Respondents are in contempt of court orders issued on 06<sup>th</sup> July, 2022**

11. I have perused the court file and the order granted by the court on 06<sup>th</sup> July, 2022 was an order for maintenance of status quo.
12. The meaning of status quo was defined by the Court in Nairobi Civil Appeal No. 33 of 2012 *Sbimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR “the present situation, the way things stand as at the time the order is made, the existing state of things.
13. Applicant has not demonstrated what the present situation concerning this matter was as at 06<sup>th</sup> July, 2022 and what Respondent did or failed to do that interfered with that status.
14. It is trite that “whoever alleges must prove. Section 107 of the *Evidence Act*, Chapter 80 Laws of Kenya states as follows:
  1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts, which he asserts, must prove that those facts exist.
  2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person
15. Applicant has not demonstrated that subdivision of L.R NO. Kiirua/Naari/527, was undertaken during the pendency of the orders issued on 06<sup>th</sup> July, 2022 and her contention that Respondents are in breach of the said order and hence, prayer 6 fails.

**Whether an order should issue directing the Registrar of Lands Meru to remove to this court all the documents presented to them for subdivision of L.R NO. Kiirua/Naari/527**

16. The subdivision of L.R NO. Kiirua/Naari/527 equally between Rebecca Naitore, M’Tirimania, Rael Mwari Jason, Damaris Kanoti Mathiu, Joyce Kananu Kaburia, the estate of Abel Mutua (Deceased) and the estate of Benjamin Thiuru (deceased) was effect in compliance with an order issued by Otieno J on 29<sup>th</sup> September, 2021.
17. Applicant has not placed any material before the court to warrant this court to direct the Registrar of Lands Meru to remove to this court all the documents presented to them for subdivision of L.R NO. Kiirua/Naari/527.
18. 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 vs. Attorney General* [2004] 1 KLR 431).
19. Consequently, prayer 8 similarly fails.

**Whether an order ought to issue directing the Registrar of Lands Meru to restore the original title L.R NO. Kiirua/Naari/527 and cancel subdivisions namely L.R NO. Kiirua/Naari/7014, 7015, 7016, 7017, 7018 and to 7019**

20. As stated at paragraph 16 of this ruling, the subdivision of L.R NO. Kiirua/Naari/527 which resulted into subdivisions namely L.R NO. Kiirua/Naari/7014, 7015, 7016, 7017, 7018 and 7019 was directed by court orders dated 29<sup>th</sup> September, 2021.
21. The said orders have neither been appealed against, set aside nor reviewed and therefore remain valid.



22. By asking the court to set aside those orders, Applicant is asking this court to sit on appeal on the orders of Otieno J dated 29<sup>th</sup> September, 2021 which jurisdiction this court does not possess and hence prayer 9 correspondingly fails.
23. From the foregoing analysis, the summons dated 11<sup>th</sup> October, 2023 is considered and found lacking in merit and it is dismissed with costs to the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents and Catherine Ntinyari.

**DATED AT MERU THIS 22<sup>ND</sup> DAY OF FEBRUARY 2024**

**WAMAE. T. W. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Munene

For Applicant - Mr. Kiogora for Kiogora Mugambi & Co Advocates

For 1<sup>st</sup> Administrator - Ms. Njoki for Muthoga Gaturu & Co. Advocates

For Catherine Ntinyari - Mr. Kithinji for Kithinji Kirigiah & Co. Advocates

For 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Respondents - Mrs. Kaume for M.G.Kaume & Co Advocates

