



REPUBLIC OF KENYA



In re Estate of the Late Simon Ndungu Kihonge (Deceased) (Succession Cause 1638 of 1993) [2024] KEHC 3352 (KLR) (Family) (21 March 2024) (Ruling)

Neutral citation: [2024] KEHC 3352 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1638 OF 1993
HK CHEMITEI, J
MARCH 21, 2024**

BETWEEN

LUCY NYAMBURA NDUNGU APPLICANT

AND

JANE NYAMBURA NDUNGU 1ST RESPONDENT

TABITHA WAIRIMU NDUNGU 2ND RESPONDENT

BEATRICE WANGARE NDUNGU 3RD RESPONDENT

RULING

1. In her application dated 15th June 2022 the Applicant prays for the following orders:
 - (a) That the 1st and the 2nd respondents be compelled to sign the transfer documents in order to bring effect to the grant issued on 10th June 2016 and amended on 8th November 2021 and in default the Deputy Registrar of this court to execute the same
 - (b) That the Land Registrar Naivasha do issue a title deed in favour of the beneficiaries;
 - (c) That the 1st Respondent and her family to vacate land parcel number Naivasha /Mwicingiri Block 4/311 and 312 respectively as per the confirmation of grant.
 - (d) The Inspector General of Police do direct the OCPD and OCS Naivasha police station to provide security so as to effect prayer(c) above.
 - (e) That the commercial property namely LR NO 1144/469 be valued and sold as per the orders of the Court of Appeal.



- (f) That this court be pleased to give orders for the compliance with the grant issued on 10th June 2016 and amended on 8th November 2021.
2. The application is based on the grounds thereof and the sworn affidavit of the Applicant dated the same date.
 3. The 2nd Respondent has opposed the application vide a preliminary objection on a point of law dated 1st September 2022 in which she has basically argued that there are other three pending suits namely Civil appeal number 305 of 2018, Nairobi; CMCC no 8660 of 2021 (OS) Nairobi and Naivasha ELC no 008 of 2022.
 4. She further stated that the amendment done on 8th November 2021 was done with concealment of material facts. She argued that the proceedings herein be stayed till all the matters are resolved.
 5. The 2nd Respondent Tabitha Wairimu Ndungu on her part vide her replying affidavit dated 13th July 2022 has not entirely denied or opposed the application and she deponed that she was now ready to sign the transfer instruments.
 6. The parties were directed to file written submissions which they have complied and the court see no reason to reproduce them here.
 7. The first issue is to determine whether the preliminary objection can stand. I do not think so. The same is based on the fact that there are pending suits which ought to be heard first. That is not a preliminary objection.
 8. The mentioned suits enumerated above are independent and distinct and there is no evidence that they are related with this matter. Neither is she arguing that this matter is res judicata.
 9. To the extent that one has to look or search for evidence elsewhere in order to conclude that the matter is actually within the purview of a preliminary objection, the same cannot avail. See *Mukisa Biscuits Manufacturing Limited v West End Distributors* [1969] EA 696.
 10. Looking at the merit or otherwise of the application I do not find any reasonable opposition to the same. The grant on record still stands. The same has never been set aside, neither is there any stay against it. All that the administratrix are supposed to do is to effect the same.
 11. In this regard it appears that they have failed to perform their part and that is why the Applicant has sought the intervention of this court. The administrators of an estate ought always to take cognisance of the fact that theirs is a privilege. They are not to lord over the beneficiaries. They must ensure a smooth transition between the deceased and the beneficiaries.
 12. Consequently, I find that this is a matter this court ought to intervene. There is no plausible reason why they have not transmitted the estate.
 13. On the issue of eviction of the other occupants from the suit property, that is not within this courts remit. The beneficiaries will have to seek the said orders elsewhere for example at the Environment and Land court. This court sitting as it is cannot issue the orders.
 14. In the premises the application is hereby allowed as hereunder:
 - (a) The Administratrix jointly and severally are hereby granted 14 days from the date herein to execute transfer documents in favour of the Applicant and any other beneficiary to the estate and in default the Deputy Registrar of this court be at liberty to sign without further reference to them.



- (b) The Land Registrar Nakuru /Naivasha do issue title deeds upon order (a) above being executed in favour of the beneficiaries as per the grant dated 8th November 2021.
- (c) The commercial property situates at LR No1144/469 be valued by a professional valuer to be appointed by the parties and the costs to be shared in the ratio of 20;40;20 within 90 days from the date herein and the same to be sold and the proceeds to be shared as per the decree and or judgement of the Court of Appeal.
- (d) Costs shall be in the cause.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 21ST DAY OF MARCH 2024.

H K CHEMITEI

JUDGE

