



REPUBLIC OF KENYA



**In re Estate of Paul Kariuki Kariithi (Deceased) (Succession Cause 545 of 2013) [2024] KEHC 4126 (KLR) (26 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4126 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 545 OF 2013  
HI ONG'UDI, J  
APRIL 26, 2024**

**IN THE MATTER OF THE ESTATE OF PAUL KARIUKI KARIITHI (DECEASED)  
MIRIAM MUTHONI KARIUKI.....ADMINISTRATOR/APPLICANT  
VERSUS  
FESTUS KIRIITHI KARIUKI..... BENEFICIARY/RESPONDENT**

**RULING**

1. In the Summons dated October 26, 2023 by the applicant herein prays for the following orders;
  - i. Spent.
  - ii. That the respondent be compelled to surrender the original title deed for LR. No Laikipia Marmarnet Rumuruti Block 1/197 (SALAMA) as well as the discharge of charge to the administrator/applicant's advocates, Elizabeth Wangari & Co. Advocates for transmission purposes.
  - iii. That the costs of this application be borne by the respondent.
2. The application is based on the grounds thereof and the affidavit of the applicant sworn on even date. She deposed that a Certificate of Confirmation of Grant was made to her on 6<sup>th</sup> November, 2015. Further, that it occurred to her and the other beneficiaries that they could not enjoy the exclusive rights of their shares in the deceased's land LR. No. Laikipia Marmarnet Rumuruti Block 497 Salama due to the nature of tenancy in common ownership.
3. She deposed further that on May 24, 2021, the court inter alia allowed summons for rectification of grant she had filed and marked the respondent's summons for revocation of grant dated 18<sup>th</sup> September, 2018 as withdrawn. She added that there was a family meeting convened on 15<sup>th</sup> May, 2022 where the respondent herein was tasked with collection of the original title deed and the discharge documents for LR. No. Laikipia Marmarnet Rumuruti Block 1/197 (Salama) from Elizabeth Wangari & Co, Advocates and Absa Bank respectively.



4. She went on to depose that the respondent herein had failed to proceed with discharge of the said parcel of land to facilitate the transmission thereof to the estate's beneficiaries. Further, that vide a letter dated April 28, 2023, her advocates on record wrote to the respondent requesting him to surrender the original title deed in vain. She added that it was her statutory duty to complete administration of the deceased's estate, which administration has now stalled due to the respondent's unwarranted actions. She urged the court to grant the orders sought in the summons in the interest of justice.
5. In response the respondent filed a replying affidavit dated 25<sup>th</sup> November 2023. He confirmed the contents of ground 5 and paragraph 8 of the supporting in respect of collecting title deeds for LR. No. Laikipia Marmarnet Rumuruti Block 1/197 (Salama). He however denied ground 6 and the contents of paragraph 9 of the supporting affidavit and averred that he only received the original title for LR. No. Laikipia Marmarnet Rumuruti Block 1/197 (Salama). He further denied the contents of ground 7 of the application, paragraphs 11, 12, 13, 14,15 and admitted those of paragraph 8 of the supporting affidavit.
6. In response to paragraph 16 he stated that he was yet to receive the original title for L.R No. 9673/12 (Molo) from the firm of Elizabeth Wangari Advocates. Further, that he was committed in undertaking the mandate given to him in the family meeting held on 15<sup>th</sup> May 2022. He added that the delay had been caused by the applicant and her advocates. He urged the court to dismiss the application with costs in his favour.
7. The applicant filed a supplementary affidavit dated 16<sup>th</sup> January 2024. She admitted the contents of paragraph 3 of the respondent's replying affidavit and denied the contents of paragraphs 6, 8, 11,12, 14, 15 and 16. For paragraphs 5, 7 and 9 she reiterated the contents of paragraph 14, 11, 13 and of the supporting affidavit respectively. Further, for the contents of paragraph 13 of the replying affidavit, the applicant deposed that same were ambiguous. She urged the court to strike out the replying affidavit as it lacked merit.
8. The application was disposed of by way of written submissions.

### **Applicant's submissions**

9. The applicant's submissions were filed by Elizabeth Wangari Advocates and are dated January 15, 2024. Counsel identified two issues for determination. The first issue was whether the administrator/ applicant was entitled to the orders sought. Counsel submitted in the affirmative and went ahead to cite section 83 of the [\*Law of Succession Act\*](#) which sets out the duties of a personal representative.
10. She submitted further that no evidence was tendered by the respondent to controvert the applicant's averments. This court's attention was drawn to the case of *Re Estate of M'rimbere M'ikunya (Deceased)* [2018]eKLR where the court held as follows; "No person should inhibit or prevent administration of any estate no matter their grievances. The proper way is to apply for appropriate orders. Short of this, the person so interfering with the administration of the estate may be dealt with: (1) if a holder of grant of representation inter alia under sections 94 and 95 of the [\*Law of Succession Act\*](#) and (2) any other person as intermeddling; with the estate and may be punished under section 45 of cap 160..."
11. On the issue of costs, the applicant urged the court to exercise its discretion and issue orders as to costs in her favour. She placed reliance on Rule 69 of the [\*Probate and Administration Rules, 1986\*](#).

### **Respondent's submissions**

12. The respondent's submissions were filed by Kamau Nyaga Advocates and are dated February 19, 2024. Counsel identified one issue for determination which is; whether the applicant's application dated 26<sup>th</sup>



October was merited. He submitted that the firm of Elizabeth Wangari advocates released the original title deed for LR. No. Laikipia Marmarnet Rumuruti Block 1/197 (Salama) to the respondent on March 6, 2023. Further, that the other title deed for L.R No. 9673/12 (Molo) was not released by the said law firm despite the instructions that the same be released to him. He added that there had been no accountability by the said law firm on how the estate had been settled or was about to be settled. In support of this position she relied on the case of *Estate of Ngaruhia Kamau (Deceased)* [2021] eKLR.

13. Counsel submitted further that the orders sought in the application were malicious since they sought to have the title deeds surrendered to an entity which was not part of the estate. Further, that the applicant portrayed him an intermeddler while it was the applicant together with her advocates who had failed to substantiate their allegations as being factually true. In support of this position he cited sections 107-109 of the *Evidence Act*.
14. Counsel went on to submit that the respondent was expected to perform his mandate of discharging an existing charge, sub-dividing and registering the title to all beneficiaries. However, that funds intended for the said actions had been denied by the applicant's advocate. He added that the respondent was at the mercy of this court to enforce his right as a beneficiary in the estate. He urged the court to dismiss the applicant's application with costs to the respondent.

### **Analysis and Determination**

15. I have considered the application, affidavits together with the submissions filed by the parties herein. In my opinion the main issue for determination is whether the application herein is merited.
16. It is not in dispute that the respondent herein was issued with the original title deed for LR. No Laikipia Marmarnet Rumuruti Block 1/197 (Salama). This is evident by the acknowledgment dated 6<sup>th</sup> March 2023 signed by the respondent herein. The applicant argued that the respondent was only mandated vide the family meeting held on 15<sup>th</sup> May 2022 to collect the title for the aforementioned property and to proceed with the discharge of the same. The respondent on his part argues that he was expected to perform his mandate of discharging an existing charge, sub-dividing and registering the title to all beneficiaries.
17. It is further not disputed that the applicant herein is the only known administrator to the estate of the deceased and the same is attested to by the grant of letters of administration issued by this court on 31<sup>st</sup> December 2013. The question that arises is whether the respondent by refusing to release the original title deed for LR. No Laikipia Marmarnet Rumuruti Block 1/197 (Salama) amounts to intermeddling with the estate of the deceased.
18. Section 45(1) of the *Law of Succession Act* provides  
“Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person”.
19. In *Veronica Njoki Wakagoto (deceased)* [2013] eKLR the court held thus:  
“The effect of [section 45]...is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorised to do so by the Law. Such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”



20. There is no doubt that the respondent herein is only a beneficiary of the estate and not an administrator. He has not been authorized by the Law of Succession Act or by any other written law, or by a grant of representation to deal with the estate of the deceased. He should therefore be restrained from interfering with the said estate and surrender the original title deed in his possession and the discharge of charge for LR. No Laikipia Marmarnet Rumuruti Block 1/197 (Salama) to the administrator/applicant's advocates. Moreover, vide the orders issued by this court on 24<sup>th</sup> May 2021 the respondent was advised to file an appropriate suit against the estate for any money owed to him by the estate of the deceased.
21. I therefore find that the application herein has merit and is hereby allowed. The following orders should issue;
- i. The respondent (Festus Kiriithi Kariuki) is hereby ordered to surrender the original title deed for LR. No. Laikipia Marmarnet Rumuruti Block 1/197 (SALAMA) as well as the discharge of charge to the administrator/applicant's advocates, Elizabeth Wangari and Co. Advocates for transmissions purposes.
  - ii. The surrender of the above documents should be complied with within seven (7) days from today.
  - iii. Costs of the application to the applicant.
22. Orders accordingly.

**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 26<sup>TH</sup> DAY OF APRIL, 2024 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**

**JUDGE**

