



REPUBLIC OF KENYA



**In re Estate of Nicholas Mworja Mwereria (Deceased) (Succession Cause
143 of 2009) [2024] KEHC 4082 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4082 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 143 OF 2009**

EM MURIITHI, J

APRIL 25, 2024

IN THE MATTER OF THE ESTATE OF NICHOLAS MWORJA MWERERIA (DECEASED)

BETWEEN

BISHOP WILLIAM MURIUKI 1ST PETITIONER

JANET KAREGI MWORIA 2ND PETITIONER

AND

ELVIN KOOME MWORIA APPLICANT

RULING

1. By Summons under certificate of urgency dated 15/12/2023 brought under sections 47, 83 and 84 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, the applicant seeks:
 1. Spent
 2. That this honorable court be pleased to make an order appointing Jopak Top Limit Ventures as a caretaker/agent to collect rent from LR No Meru Municipality Block II/165 1/44
 3. That the honorable court also be pleased to make an order that the tenants on LR Meru Municipality Block II/165 to remit the rent to court and that a joint account between the administrators and the court be opened for the said purpose until the agent is approved.
 4. That cost of this application be provided for.
2. The application is premised on the grounds on the face of it and supported by an affidavit sworn by the applicant on even date. He avers that he filed an application dated 25/10/2021 seeking inter alia the appointment of a caretaker/agent for the said property to collect rent, and the court issued an order dated 20/12/2022. He prays that the agent trading by the name Jopak Top Limit Ventures be appointed to collect rent from LR No Municipality Block II/165 (henceforth called the suit property).



The application is made in good faith and is necessary for purposes of implementing the court order of 20/12/2023. Ken Kimaita has been collecting rent and banking the same in his Standard Chartered Bank contrary to the court orders and the only way to stop him is for the court to appoint an agent to collect rent. He prays for the court to order the tenants to remit the rent in court and an account be opened in the name of the administrators and the court where the rent will be deposited until the agent is approved.

3. The applicant swore a supplementary affidavit on 1/2/2024 accusing the administrators of failing to pay his school fees as ordered by the court.
4. The 1st respondent swore a replying affidavit on 25/1/2024 in opposition to the application. She accuses the applicant of being insincere and taking the court as a circus thus abusing its process. She terms the application as being scandalous, incurably defective, incompetent, bad in law, vexatious and a waste of the court's time. She denies that Ken Kimaita has been collecting rent as there is an agent namely Mosmac Agencies Limited appointed by the administrator of the estate to collect rent from all the properties of the estate including the suit property. This court pronounced itself in the matter by the ruling of 28/9/2023 and the applicant opted to appeal the said ruling by filing a notice of appeal dated 2/10/2023. The applicant is encouraged to pursue his appeal and avoid the side shows as well as wasting the court's time. She reiterates that the court has powers to summon the administrator to provide accounts of the estate whenever needed and the applicant should avoid picking up wars with other beneficiaries for reasons best known to him. The orders of this court are very clear and self explanatory which the administrators are committed to implement as per the law.
5. The 2nd respondent swore a replying affidavit on 3/2/2024 in support of the application. He accuses the 1st respondent of disobeying the orders of 20/12/2022 and refusing to pay college school fees for the applicant. He also denies being involved in the appointment of Mosmark Agencies and the Mosmark Service Contract is at a lower rate of 5% to their commission against their counterpart Jopak Ventures Limited. He urges the court to allow the application to ease the wrangles and feuds that have gone on for so long in this matter.
6. The application was urged orally and ruling was reserved.

Determination

7. Having considered the application and the affidavits on record, the issue for determination is whether the application is merited.
8. Pursuant to an application filed by the applicant on 14/12/2022 seeking an array of orders, this court ordered that:
 - “2. An order be and is hereby issued that the respondents/petitioners do render accounts of all incomes received from LR No. Meru Municipality Block II/165 And LR No Municipality Block I/348- On Kenyatta Highway Ajacent To Block 1/44.
 3. An order be and is hereby issued that the respondents/petitioners do pay school fees for the applicant to the tune of ksh 120,000 for the applicant from the income received from LR No. Meru Municipality Block II/165 pending hearing and determination of this application interpartes.



4. An order be and is hereby issued that the respondents/petitioners do pay school fees for the applicant to the tune of ksh 120,000 for the applicant from the income received from LR No. Meru Municipality Block II/165.
 5. An order be and is hereby issued for court to appoint a caretaker to manage Meru Municipality Block II/165 and LR No Meru Municipality Block 1/348- on Kenyatta Highway Ajacent To Block 1/44.
 6. An order be and is hereby issued to the respondents to deposit all monies received from LR No. Meru Municipality Block II/165 in court until a caretaker of the said property is appointed by the court.”
9. In its aforementioned order, the court was very categorical and explicit that the respondents were to deposit all monies received from the suit property and another property in court until a caretaker had been so appointed by the court.
 10. It appears that the appointment of Mosmark Agencies Limited by the 1st respondent contravened the express orders of the court of 20/12/2023. The 1st respondent is thus cautioned that court orders must be obeyed by all and sundry and any person who is found to obstruct the implementation of a court order shall be held to be in contempt of court.
 11. In *Fred Matiangi, the Cabinet Secretary Ministry of Interior and Co-ordination of National Government v Miguna Miguna & 4 Others* [2018] eKLR, the Court of Appeal emphatically stated that:

“When Courts issue orders, they do so not as suggestions or pleas to the persons at whom they are directed. Court orders issue ex cathedra, are compulsive, peremptory and expressly binding. It is not for a party, be he high or low, weak or mighty, and quite regardless of standing in society, to decide whether or not to obey, to choose which to obey and which to ignore, or to negotiate the manner of his compliance. This Court, as must all courts, will deal firmly and decisively with any party who deigns to disobey court orders and will do so not only to preserve its own authority and dignity but the more to ensure and demonstrate that the constitutional edicts of equality under the law, and the upholding of the rule of law are not mere platitudes but present realities.”
 12. In order to progress this matter towards closure so that the wrangles between the parties herein can be finally put to rest, this court will, in the interest of justice and in the intervening period, allow Mosmark Agencies to continue collecting rent from the suit property and Meru Municipality Block 1/348 - on Kenyatta Highway Adjacent To Block 1/44 pending the finalization of the distribution of the estate to the beneficiaries.
 13. The respondents are hereby called upon to move with speed to conclude the administration process in accordance with the orders of the court of 28/9/2023.

Orders

14. Accordingly, for the reasons set out above, this court allows the application dated 15/12/2023 in the following terms:
 1. Mosmark Agencies Limited has hereby been appointed as a caretaker of the estate.



2. The said agency shall continue to collect rent from Meru Municipality Block II/165 1/44 and Meru Municipality Block 1/348- on Kenyatta Highway Adjacent to Block 1/44 pending the completion of the administration of the estate.
3. The pending school fees, if any, for any grandchildren of the deceased to be paid forthwith, as earlier directed by the court.

Order accordingly.

DATED AND DELIVERED THIS 25TH DAY OF APRIL, 2024.

EDWARD M. MURIITHI

JUDGE

Appearances:-

Ms. Nelima for Applicant

Mr. Mathenge for Beneficiary John Mworia

Ms. Rimita for Petitioner

