



**Gachuki (Suing as the legal representative of the Estate of Wilson Mwangi Ramson (Deceased)
v Gachagwa (Sued as personal representative of Hilda Nyambura Gathuri (Deceased) (Civil
Miscellaneous Application E490 of 2022) [2024] KEHC 8775 (KLR) (Civ) (27 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 8775 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL MISCELLANEOUS APPLICATION E490 OF 2022

AN ONGERI, J

JUNE 27, 2024

BETWEEN

**MARYANNE MUMBI GACHUKI (SUING AS THE LEGAL REPRESENTATIVE
OF THE ESTATE OF WILSON MWANGI RAMSON (DECEASED) ... PLAINTIFF**

AND

**BEATRICE WAITHERA GACHAGWA (SUED AS PERSONAL
REPRESENTATIVE OF HILDA NYAMBURA GATHURI
(DECEASED) DEFENDANT**

RULING

1. The application coming for consideration in this ruling is the one dated 15/8/2022 brought under Order 42 Rule 35 (2) of the Civil Procedure Rules 2010, Section IA & 1B and 3 and 3A of the *Civil Procedure Act* Cap 21 laws of Kenya, Rule 3(1) and (2) of the High Court (Practice and Procedure) Rules and all other enabling provisions of the law seeking the following orders;
 - i. That entry number 10 on the record of Land parcel number Fort Hall Loc 2 Kinyona/217 be lifted, set aside and/or vacated.
 - ii. That costs of this Application be provided for.
2. The application is based on the following grounds;
 - i. That the suit by Hilda Nyambura Gathuri has abated, because the said Hilda Nyambura Gathuri met her demise more than a decade ago.
 - ii. That pursuant to Order 42 Rule 35 (2) of the Civil Procedure Rules 2010, Civil Appeal No. 179 of 1995 lodged by the late Hilda Nyambura Gathuri pursuant to the said Hilda Nyambura



holding an interest in land parcel Fort Hall Loc 2/ Kinyona/217 was dismissed by court on 18th June, 2015.

- iii. That in a judgment dated 12th October, 2021, Honourable Lady Justice J. G. Kemei pronounced the court's determination as to ownership of the land Loc 2 Kinyona/217 by declaring the said land to belong to Wilson Mwangi Ramson, in Murang'a High Court ELC Suit Number 20 of 2017.
 - iv. That as a consequence of the 2 judgments cited at 2 and 3 above any claims by the late Hilda Nyambura Gathuri to the land subject matter are therefore defeated.
 - v. That unless the restriction upon the land cited above is removed and/or lifted, the judgment creditor in Murang'a ELC case No. 20 of 2017 to wit, Maryanne Mumbi Gichuki will not be able to enjoy the fruits of judgment in her favor.
 - vi. That it is only met and just that the court does lift the restriction on the subject land matter to enable execution of the Honourable court's orders and Decree.
3. The application is supported by the affidavit of Maryanne Mumbi Gichukisworn on 15/8/2022 in which she deposed as follows;

That I am a female adult of sound mind, the Applicant in this matter and therefore fit and proper person to swear this affidavit in support of my application herein.

That my husband, to wit, Wilson Mwangi Ramson met his demise on or about the 25th clay of November, 2018.

That I obtained grant to estate of my late husband. Annexed hereto and marked MMG-I is a copy of the grant.

That my late husband bought land parcel number Loc 2 Kinyona/217 and was issued with a certificate of title on or about 9th March 1994. Annexed hereto and marked NIMG-2 is a copy of the green card to the said land.

That the late Hilda Nyambura Gathuri had obtained court orders, put restriction upon Loc 2 Kinyona/ 217 in the following words "no dealings in any way whatsoever prejudicial on the property rights and interests of Hilda Nyambura Gathuri Account No. 536 of 1995". Annexed hereto and marked MMG-3 is a copy of the green card to the land.

That my late husband filed suit Elc No. 20 Of2017 in Muranga court wherein the court determined that property rights and interest in the land accrued to my late husband. Annexed hereto and marked MMG-4 is a copy of the Decree extracted from the judgment of Honourable Lady Justice J. G. Kemei.

That the late Hilda Nyambura Gathuri had also filed an Appeal at the High Court/Nairobi; Civil Appeal No. 179 of 1995, which matter had also been dismissed on the 18th day of June, 2015. Annexed hereto and marked MMG-5 is a copy of the order delivered by Hon. Lady Justice M. Thande.

That as a result of the above mentioned judicial decisions, any claims by the late Hilda Nyambura Gathuri as regards the subject parcel of land; Loc 2 Kinyona/217 are therefore defeated and or settled in favour of the applicant herein.

That it is only met and just that the court do set aside vacate and/or lift the restriction upon the land subject matter herein to enable the heirs of the late Wilson Mwangi Ramson enjoy the fruits of the judgment in their favour.

4. The respondent filed a replying affidavit sworn on 10/2/2023 in which she deposed as follows;



That I am sued as the sole representative of the estate of my late mother Hilda Nyambura Gathuri. This is not correct. The estate of my said late mother, hereinafter the Deceased is represented by me Beatrice Waithera Gachagwa, Grace Wairimu Samuel and Titus Kamau Gathuri (Deceased). Annexed hereto is the letter of Administration Intestate dated 20th November 2017

That I am therefore competent and authorized by my surviving co-administrator Grace Wairimu Samuel to swear this replying affidavit as follows.

That at the moment the Deceased's estate is represented by myself and my sister Grace Wairimu Samuel.

That further I am advised by my advocates on record whose advice I verily believe to be true that the applicant ought to have filed this suit at Murang'a High Court in compliance with Section 12 of the [Civil Procedure Act](#).

That paragraphs 1, 2, 3 and 5 of the applicant's affidavit, hereinafter the "affidavit" are true

That paragraphs 4, 6 and 7 of the said affidavit are not true.

That the purported order attributed to the Hon. Lady Justice M. Thande is a fraud on the face of the record and fraudulent misrepresentation of the facts on the record in H. C. Civil Appeal No. 179 Of 1995 and H.C. Misc. Civil Case No. 536 Of 1995.

"annexed hereto see the Judgement and Decree of the Hon. Mr. Justice Aganyanya, J; and the 'Hon. Mr. Justice Okubasu, J.;

That further the Defendants/Interested Parties have appealed against the Judgement of Lady Justice J. G. Kemei dated 12th October 2021, with overwhelming chances of succeeding in their appeal. The said judgement being an affront to the rule of law and the process of law as practiced in the Commonwealth countries including Kenya. "annexed hereto is A Notice of Appeal"

That the applicant has filed two H. C. MISC. applications in this Court, namely Misc. Application 536 of 1995, dated 1st February 2022, and Misc. Application No. 13490 of 2022, dated 15th August 2022, seeking the same order and supported by a similar affidavit deposed by the same deponent. "annexed hereto is the Applicant's other application on same subject matter dated 1st February 2022"

That it is incumbent upon the applicant to choose which one of the 2 applications she wishes the Honourable Court to hear before taking a hearing date in any one of the said 2-applications.

That further the applicant took the hearing date scheduled for hearing on the 14th February 2023 *ex parte*. The same is not convenient for the Respondents' advocates diary.

That I hope the applicant will, after making a choice as to which one of her 2 applications she wishes to prosecute, invite my advocates so that the 2-advocates can take a hearing date which is convenient to both her advocates and my advocates.

That meanwhile my advocate has a part heard matter E.L.C. No. 2207 of 1998 being mentioned on the 14/02/2023 for the purpose of deciding whether further hearing in that case should be continued by the Hon. Mr. Justice Okong'o, J; who has since been transferred to Kisumu or whether it be assigned to a new judge in Nairobi. Therefore this is a mention which requires the presence of Mr. Nabutete to appear in Court in person.

That consequently, my advocate Mr. Nabutete informs me that for reasons given above he will not be able to attend the hearing in this application on the 14th February 2022. He awaits for the invitation to take a mutually convenient hearing date.



5. The parties filed written submissions as follows; the applicant submitted that the suit under reference High Court Misc. Application No. 536 of 1995 abated as the said Hilda Nyambura Gathuri is said to have died on 20/9/2017 and by 20/9/2018 no steps had been taken to prosecute the suit and thus any claims pertaining LR. LOC.2 Kinyona/217 were laid to rest.
6. The applicant further submitted that High Court Civil Appeal 179 of 1995 was dismissed on 18/7/2022. The miscellaneous application was based on the Civil Appeal and could not be revived after it abated in September 2018. The applicant contended that in the instant application one administrator of the estate of Hilda Nyambura Gathuri is deceased while the other administrator has not been pro active in the course of suits where the deceased was a party.
7. The applicant submitted further that this court has jurisdiction hear the matter as the first application for removal of the caution under reference in this application was filed in High Court Miscellaneous Application Number 536 of 1995. That application was filed in Nairobi High Court, Nairobi. Further, the application to lift the caution subject matter of this suit was predicated on High Court Appeal Number 179 of 1995 a Nairobi High Court file.
8. The applicant argued that the respondent has failed to furnish the court of the indubitable fact that there is no stay of orders by Lady Justice J.G Kemei and that the orders have already been executed wherein only correcting the record of the parcel of land subject matter still remains outstanding due to the caution upon the land by the late Hilda Nyambura Gathuri. The respondent also failed to mention that their application for stay filed in Nyeri Court of Appeal was dismissed by the Court of Appeal on 24/6/2022.
9. The sole issue for determination in this application is whether the entry on the record of Land Parcel no. Fort Hall Loc2 Kinyona/217 (the suit property) should be lifted, set aside and/or vacated.
10. The basis for seeking to vacate the said order is that the appellant Hilda Nyambura Gathuri(deceased) met her demise more than 9 decades ago and the suit has abated.
11. Further that on 12/10/2021 Hon. Justice J G. Kemei pronounced a judgment that the suit property belongs to Wilson Mwangi Ramson(deceased) who was the husband of the applicant.
12. I find that although the respondent has opposed the application dated 15/8/2022 on the basis that there is a pending appeal, no order of stay has been attached to warrant the entry to remain in the record of the said suit property. It is not.
13. I find that the application dated 15/8/2022 has merit and I allow it and direct that the entry number 10 of the record of land parcel no. Fort Hall Loc 2 Kinyona/217 be lifted, set aside and/or vacated.
14. Each party to pay their own costs of the application dated 15/8/2022.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 27TH DAY OF JUNE, 2024.

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant

