



**In re Estate of David M'Mwirebua Barethi alias Mwirebua Mbarethi (Deceased)  
(Succession Cause 3 of 1985) [2024] KEHC 7699 (KLR) (27 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7699 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 3 OF 1985  
EM MURIITHI, J  
JUNE 27, 2024**

**BETWEEN**

**GLADYS MUKORUGURU ..... 1<sup>ST</sup> PETITIONER**

**JEDIEL MUTHURI ..... 2<sup>ND</sup> PETITIONER**

**AND**

**GLADYS KAROKI MWIREBUA & PROMINAH KAROKI ... 1<sup>ST</sup> INTERESTED  
PARTY**

**REDEEMED GOSPEL CHURCH MERU & ESTHER WANJIRU  
M'IMATHIU ..... 2<sup>ND</sup> INTERESTED PARTY**

**ANN MWARI MWIREBUA ..... 3<sup>RD</sup> INTERESTED PARTY**

**AND**

**ANN MWARI MWIREBUA ..... INTERESTED PARTY**

**RULING**

1. There are several pending applications filed towards the implementation of the various orders in the Cause. Because similar factor of the concluded state of the proceedings herein, the Court finds it convenient to deal with the applications globally in the same ruling.

**1st Application**

2. By a Notice of Motion under certificate of urgency dated 25/5/2023, pursuant to section 49 of the Probate and Administration Rules, Gladys Karoki, the Petitioner herein seeks:
  1. Spent



2. That this Honorable Court be pleased to lift the inhibitions placed on L.R No. Ntima/Igoki/4250, and Nyaki/Mulathankari/276.
  3. That this Honorable Court be pleased to order cancellation of title for Land Parcels Number Ntima/Igoki/4250, Nyaki/Mulathankari/276, Kiirua/Ruiri/3826, Kiirua/Ruiri/3827 and Kiegoi/Kinyanka/498 to facilitate transfer of land accordingly.
  4. Costs of this application be in the cause.
3. The application is premised on the grounds on the face of it and supporting affidavit of the Petitioner sworn on even date. She avers that she is through with some transfers save for a few which are being hindered by inhibitions and titles being produced illegally by the former administrator. Although this cause was heavily contested, she was only served with Meru ELC Case No. E003/2020 relating to L.R No. Ntima/Igoki/4254. She is now old and sickly and she should be allowed to complete the administration of the estate in time. She is apprehensive that the titles with the former administrator may have been interfered with as he was very well connected at the land's office. She prays that the inhibitions placed against L.R Nos. Ntima/Igoki/4250 and Nyaki/Mulathankari/276 be lifted to enable her transfer the same to the rightful beneficiaries.
4. The application has not been responded to.

### **2nd Application**

5. By a Notice of Motion dated 4/8/2023, brought under section 3 & 3A of the *Civil Procedure Act*, Order 12 Rule 7 of the *Civil Procedure Rules* and other enabling provisions of the law, Gladys Karoki, the Petitioner herein seeks, "That the court be pleased to order the land registrar Meru to dispense with the production of the original titles while executing the grant in respect of Kiirua/Ruiri/3826, 3827 and Nyaki/Mulathankari/276."
6. The application is premised on the grounds on the face of it and her supporting affidavit sworn on even date. She avers that she is a daughter of the deceased and the administrator herein. Although this cause has been concluded, they have been unable to execute the grant since 3 original title deeds to Kiirua/Ruiri/3826, 3827 and Nyaki/Mulathankari/276 are missing. They are now requesting that the court be pleased to dispense with the production of those title deeds so that the grant can be executed by the Land Registrar Meru.
7. The application was granted by the order of the Court made on 18/12/2023.

### **3rd Application**

8. By Notice of Motion under certificate of urgency dated 16<sup>th</sup> November 2023 pursuant to Order 51 Rule 1 of the Civil Procedure Rules, Sections 3 and 3A of the *Civil Procedure Act*, and all enabling provisions of the law, Esther Wanjiru M'Imathiu, the 2<sup>nd</sup> Interested Party seeks that, "This Honorable court be pleased to Order that the caution and inhibitions lodged in the L.R Ntima/Igoki/4254 be hereby removed or lifted forthwith."
9. In her affidavit in support of her application, the 2<sup>nd</sup> Interested Party and the registered trustee of Redeemed Gospel Church Meru avers that they are the registered owners of L.R No. Ntima/Igoki/4254 vide a judgment in Meru ELC Court No. E003/2020 dated 25/10/2023. There was a caution placed by Gladys Karoki on 2/6/2010 and an inhibition order dated 20/11/2019 registered on 16/12/2019. There is nothing pending and in view of this suit having been heard and determined



and orders issued declaring them as the bonafide owners of the suit land, they humbly pray for the said caution and inhibition orders to be lifted or removed forthwith.

10. The application was not responded to.

#### **4th Application**

11. By chamber summons under certificate of urgency dated 6/12/2023 pursuant to Rule 74 of the *Probate and Administration Rules*, Anne Mwari Mwirebua, the 3<sup>rd</sup> Interested Party/Beneficiary seeks:
  1. Spent
  2. That the Honorable Court be pleased to:-
    - a. That the Honorable Court be pleased to lift the Inhibition placed on Parcel No. Nyaki/Mulathankari/276 on 16<sup>th</sup> of December 2019, and
    - b. The Honorable Court be pleased to lift the Restriction placed on Parcel No. Nyaki/Mulathankari/276.
12. The application is premised on the grounds on the face of it and supporting affidavit of Anne Mwari Mwirebua, the 3<sup>rd</sup> Interested Party and a beneficiary herein sworn on even date. She avers that the inhibition and restriction were put in place to await the outcome of the main cause, and since the same has now been finalized, it is apt for them to be lifted to pave way for the execution of the rulings hereto, and no party will be prejudiced if the application is allowed.
13. The application has not been responded to.

#### **Analysis and Determination**

14. The issues for determination are whether the inhibitions, restrictions and cautions on L.R No. Ntima/Igoki/4254 and L.R No. Nyaki/Mulathankari/276 ought to be lifted and/or removed.
15. Section 70 of the *Land Registration Act* provides for cancellation of inhibition as follows:

“The registration of an inhibition shall not be cancelled except in the following cases — (a) on the expiration of the time stated in the inhibition; (b) on proof to the satisfaction of the Registrar of the occurrence of an event stated in the inhibition; (c) on the land, lease or charge being sold by a charge, unless such sale is itself inhibited; or (d) by a consequent order of the court.”
16. The inhibition on L.R No. Ntima/Igoki/4254 was to subsist until the hearing and determination of this cause. Gladys Karoki has also placed a caution thereon claiming a licensee interest. That land was the subject of the proceedings in Meru ELC Case No. E003/2020, where Redeemed Gospel Church Meru and Esther Wanjiru M’Imathiu are the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs respectively.
17. In its judgment dated 25/10/2023, the court (C.K Nzili J) held that; “104. Looking at the totality of the evidence produced in support of the plaintiff. The plaintiffs have proved their claim to the required standard to be entitled to the reliefs sought. I find the defense and counterclaim by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants incompetent and unmerited. The third-party notice lacks merits. The 2<sup>nd</sup> and 3<sup>rd</sup> defendant’s counterclaim and third-party notice are hereby dismissed with costs to the plaintiffs. The plaintiffs suit is allowed. a declaration is hereby issued that the suit land belongs to the plaintiffs, having been lawfully and legally acquired by the 2<sup>nd</sup> plaintiff in trust for the 1<sup>st</sup> plaintiff. Costs to the plaintiff.”



18. This court finds that since the case pending before the Environment and Land Court (ELC) has since been heard and finally determined, the inhibition and the caution placed on L.R No. Ntima/Igoki/4254 serve no purpose and it is prudent that they be removed so that the 2<sup>nd</sup> Interested Parties can freely deal with their rightfully acquired land.
19. Turning now to the inhibitions on L.R No. Nyaki/Mulathankari/276 and L.R No. Ntima/Igoki/4250, the same were to subsist until this cause had been heard and determined. This cause was fully heard and finalized vide the rectified certificate of confirmation of grant dated 12/3/2021.
20. The court notes the certificates of official searches for L.R No. Kiirua/Ruiri/3826 and 3827 which show that they were registered in the name of Jediel Mwirebua Muthuri on 5/11/2004 and title deeds issued on 3/8/2010. It is only fair that those title deeds are cancelled so that the same can devolve to the rightful beneficiaries in accordance with the rectified certificate of confirmation of grant dated 12/3/2021.
21. The court finds it imperative to cancel the production of the original title deeds to L.R Nos. Nyaki/Mulathankari/276, Kiirua/Ruiri/3826 and Kiirua/Ruiri/3827 to enable the finalization of the transmission process.

### **Final Orders**

22. Accordingly, for the reasons set out above, the Court allows the applications dated 25/5/2023, 16/11/2023 and 6/12/2023 and having granted application dated 4/8/23, as prayed, now makes the following final orders:
  1. The inhibitions, cautions and/or restrictions placed on L.R No. Ntima/Igoki/4250, L.R No. Ntima/Igoki/4254 and Nyaki/Mulathankari/276 are hereby lifted.
  2. The title deeds to L.R Nos. Ntima/Igoki/4250, Nyaki/Mulathankari/276, Kiirua/Ruiri/3826, Kiirua/Ruiri/3827 and Kiegoi/Kinyanka/498 are hereby cancelled.
  3. The production of the original title deeds to L.R No.s Kiirua/Ruiri/3826, 3827 and Nyaki/Mulathankari/276 is dispensed with.
  4. File closed.

Order accordingly.

**DATED AND DELIVERED ON THIS 27TH DAY OF JUNE 2024.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Ms. Riungu for 2<sup>nd</sup> Interested Party.

Mrs Kaume for 1<sup>st</sup> Interested Party.

Ms. Ann Mwari Mwirebua the 3<sup>rd</sup> Interested Party in Person.

N/A for the Petitioners.

