



**In re Estate of Masa Salimbani (Deceased) (Succession Cause
34 of 2013) [2024] KEHC 10680 (KLR) (14 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10680 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 34 OF 2013
REA OUGO, J
AUGUST 14, 2024
IN THE MATTER OF THE ESTATE OF MASA SALIMBANI DECEASED**

BETWEEN

RICHARD CHEMOS MAASAI ADMINISTRATOR

AND

KUNDO TULEI JOSEPH ADMINISTRATOR

AND

JOHN KARIKA TULEI 1ST OBJECTOR

BRAMUEL TULEI 2ND OBJECTOR

RULING

1. Masai Salimbani, hereinafter referred to as the deceased died on the 16th July 1977. On the 14th of July 2020, Kudos Tulei Joseph and Richard Chemosi Masai were issued a grant of letters of administration intestate. This was after the Ruling dated the 12th May 2020. On the 28th of September 2022, Richard Chemos Maasai applied to confirm the grant of the letters of administration
2. The affidavit of Richard Chemos Maasai (1st administrator/ applicant) dated 28th September 2022 supports the application. He avers as follows; a letter of administration intestate of the grant was issued on the 14th of July 2020. The deceased died intestate leaving behind the following assets, Land Parcel No. Elgon/ Kaptama/320 (parcel no. 320). Prior to his death the deceased was survived by the following beneficiaries;
 - a. Richard Chemos Maasai - son
 - b. Robert Boiyo Jairo - grandson
 - c. Kisembe Kimtai Kitiyo -grandson



- d. David Kwemoi Kitiyo -grandson
 - e. Richard Kwemoi -grandson
 - f. David Kimutai Richard - grandson
 - g. David Kitembe Mneria -grandson
 - h. Collins Kiprotich Richard - grandson
 - i. Titus Kipruto Masaai -grandson
3. The only beneficiary to the property parcel no. 320 are the beneficiaries who have signed the mode of distribution as follows;
- i. Richard Chemos Maasai - son - 0.7 Ha
 - ii. Robert Boiyo Jairo - grandson -1.1Ha
 - iii. Kitembe Kimtai Kitiyo -grandson -1.1Ha
 - iv. David Kwemoi Kitiyo -grandson -1.1.Ha
 - v. Richard Kwemoi -grandson- 0.7 Ha
 - vi. David Kimutai Richard - grandson -0.7 Ha
 - vii. David Kitembe Mneria -grandson -3.3 Ha
 - viii. Collins Kiprotich Richard - grandson -0.7Ha
 - ix. Titus Kipruto Masaai -grandson -0.7 Ha
4. Kundos Tulei Joseph the 2nd administrator the Co- administrator filed an affidavit dated the 4th July 2023. He depones as follows; Richard Chemos Masai is the son of Masai Salimbani and he is the son of Jason Masai Tumwet. Masai Salimbani (Masai) and Jason Masai Tumwet (Jason) were cousins. They are both deceased. They lived in one parcel of land in the following proportions; Masai 8.7 acres and Jason 16 acres. During the registration of land parcel no. 320 Jason was working as a police officer in North Eastern Province and the land was registered in the name of Masai who held it in trust for himself and Jason.
5. Masai was survived by the following persons; Sudi Cheruguti (widow- deceased), Jairo Kitiyo Masai (son- deceased) , Charles Mneria (son), Richard Chemosi Masai (son), Margaret Cheptora Masai (daughter- deceased), Beatrice Tengian Masai (daughter), Alice Yego (daughter- deceased).
6. Jason Masai Tumwet was survived by the following persons;
- 1st House
- i. Marita Nerno Mrefu (Deceased)
 - ii. Ruth Chemtai Masai
 - iii. Hellen Chesabiny Masai
 - iv. Chepkwemoi Betronilla Masai
- 2nd House
- i. Marita Chepkarat Jason



- ii. Bramwel Tulei Chepkorot
 - iii. Doctor Jason Masai (deceased)
(Lucy Nasambu & Jason Mazoloz)
 - iv. Mang'eny Masai
 - v. Peter Tulei
 - vi. Joseph Kundos Tueli
7. The identified and shares of all persons beneficially entitled to the estate is as follows;
Property Land Parcel No. Elgon/ Kaptama/ 320
- a. Masai Salimbani Family
Administrator Richard Chemosi Masai to distribute -8.7 acres
 - b. Jason Masai Tumwet Family -16 acres
1st House
 - i. Ruth Chemtai Masai - 1 ½ acres
 - ii. Hellen Chesabiny Masai - 1 ½ acres
 - iii. Chepkwemoi Betronilla Masai - 1 ½ acres
2nd House
 - i. Marita Chepkarat Jason (Alive) - 2 acres
 - ii. Bramwel Tulei Chepkorot -1 ½ acres
 - iii. Doctor Jason Masai (deceased)
(Lucy Nasambu & Jason Mazoloz) - 1 ½ acres
 - iv. Mang'eny Masai - 1 ½ acres
 - v. Peter Tulei - 1 ½ acres
 - vi. Joseph Kundos Tueli - 3 ½ acres
8. When I took over the matter from Judge Riechi I was informed that the court had ordered that a surveyor's report be tendered in court. I heard the following witnesses. Veronica Awinja Asikoye a surveyor from Kapsokonwy in Mt. Elgon. She testified that she visited parcel number 320, 9.82 Ha (about 24.2 acres). Richard Masai's family resides in the said parcel. There is no other family there. During cross-examination, she told the court the land is registered in the name of the deceased Masai Salimbani who is the father of Richard Masai. There is a boundary dispute that exists between the 2.
9. Antony Kirui Lawenoi testified that he stays at Mt. Elgon Kapatama and he is the chief of the said location. He wrote the letter dated 4.4.2022. he produced the letters dated 13.2.2017 and 4.4.2022. He knows the 2 families. One is from the Kaptama sub-location and the other is from the Kaboro sub-location. They are neighbours. Richard is the son of Salimbani. The Objectors are the sons of Jason. The objector has no relation with the family of Salimbani. They belong to different clans Richard belongs to the Kaminyeti clan and Jason to the Kabius clan. Jason's family owns parcel no. 319, the graveyards are in 319. Each person has their shamba. During cross-examination, Antony told the court



that there is a boundary dispute and he had no interest in the shamba. He was not the chief when the letter dated 13.2.2017 was written. He knows that the 2 families live in different shambas. He was not aware that the 2 were joint administrators.

10. Richard Chemosi testified that his father was Masai Salimbani. The objectors are their neighbours. He stays in parcel number 320. Kundos shamba is number 319 which is different from theirs. He relied on his affidavits dated 24.6.2014 and 28.9.2022 and his list of documents dated 6.7.2023. During cross-examination, he testified that he knew that the case was heard but the Ruling had not been delivered. He stated that what was stated in the Ruling in paragraph 12 is a lie. His father had 7 children 3 sons and 4 daughters. He identified the beneficiaries as his sons and nephews and no sister of his is listed as a beneficiary. He cannot list the objectors as beneficiaries as they have another shamba. H cannot accept 8.7 cares. He acknowledged that Jason had a proposal for 2 houses within Jason's family but he could not accept the mode of distribution.
11. Parties filed written submissions. The 1st administrator listed the following for determination;
 - i. Whether the deceased Masai Salimbani was holding 16 acres of the suit property in Customary Trust on and behalf of Jason Tumwet, deceased.
 - ii. Whether the family of the 2nd administrator have their own land to wit; Elgon/ Kaptama 319.
 - iii. Whether the proposed mode of distribution by the 2nd administrator can be adopted.

The 1st administrator submitted at length on the issue of whether the deceased was holding 16 acres in customary trust on behalf of the family of Jason Tumwet. It was submitted that there was no evidence to prove that before adjudication and registration, the suit land was family clan or group land. The parties belong to different clans the 1st administrator is from the Kapnyit clan and the 2nd administrator belongs to the Kapnyus clan. The legal burden of proving that the suit land was trust land has not been discharged. The objector's family upon his return from duty in North Eastern where was serving as a police officer did not lay claim of customary on the suit property. The 2nd administrator has failed to prove the threshold of possession and occupation as they have never been in possession of the suit land and that no attempts were made by the family to explain on why their patriarch failed to register himself as the owner. That 47 years lapsed since 1966 when the suit land was registered in the name of the deceased to 2013 when this suit was filed. This was 47 years of indolence, non-protest, abeyance and acquiescence on the part of the 2nd administrator and that this shows malice, bad intentions and hidden agenda on the part of the 2nd administrator in pursuing the suit land. The 2nd administrator was given his parcel of land being Elgon /Kaptama/319 which is about 7.8 Ha and was first registered to Ndiwa Tulei, which evidence was supported by the evidence of the Chief Antony Kirui. The surveyor's evidence corroborated this. The 2nd administrator did not adduce any cogent evidence on the size of land which his father was given which the deceased held in customary trust. The beneficiaries of Masai Salimbani were disclosed in the mode of distribution dated 28.9.2022 and that it is fair and just administration of the estate of the deceased. This court being a succession court is devoid under sections 25 and 28 (b) of the [Land Registration Act](#) to arbitrate on matters of title and land ownership which is a preserve of the Environment and Land Court. The 2nd administrator should direct his claim to the appropriate court, the court should adopt the mode of distribution of the 1st administrator.

12. The 2nd administrator submitted as follows; the issues for determination are as follows;
 - i. Was the late Masai Salimbani the absolute owner of land parcel number Elgon/ Kaptama /320?
 - ii. If the answer to the first issue is not in the affirmative, who else had an interest in the said land?
 - iii. How should the land be distributed?



13. It was submitted the 1st issue was dealt with by the court in its ruling of 12.5.2020 at paragraph 12 when the court stated that Masai Salimbani who was the registered owner of the property and held it in trust for himself and Jason Masai Tuwei. The said decision was not challenged by any appeal and it is the basis of the grant of letters of administration. The land parcel belongs to two families Masai Salimbani and Jason Masai Tuwei. The estate property comprised 24.7 acres. The petitioner's mode of distribution was filed in court on 25.10. 2022 seeks to distribute the entire property – 10.1 Ha or 24.7 acres to 10 beneficiaries who are all members of the Masai Salimbani only. The 1st objector's mode of distribution filed on the 25.2.2021 seeks to distribute the property to the 2 families, Masai Salimbani getting 8.7 acres and Jason Masai Tuwei getting 16 acres, and the mode of distribution is based on the ground status of occupation of the land.

Analysis And Determination

14. In a Ruling dated 12.5.2020 the two issues the court considered were; whether or not the late Masai Salimbani is the registered owner of Elgon/ Kaptama/ 320 if so, was he holding the same in trust for Jason Masai Tumwet and if answer, was in the affirmative should the interest of the estate of Jason Masai Tumwet be considered. The Court's decision on the two issues was as follows;

“Paragraph 12. Registration of land indeed makes one a proprietor but considers over riding interest which includes trusts. In the circumstances of the case and from facts laid bare in this matter which facts were not controverted, the deceased herein may be the registered owner, however, he held the property for himself and in trust for Jason Masai Tuwei as had been intended by the original owner and so I find.”

Paragraph 13. Consequently, and in the interest of justice, I do find that none inclusion of the estate of the late Jason Masai Tuwei was erroneous as they indeed have a beneficial interest in this estate. I therefore uphold the objection. And appoint Kudos Tullei Joseph and Richard Chemosi Masai as administrators of the estate of Masai Salimbani.

Paragraph 14. Due to the age of the matter the Deputy Registrar is hereby directed to issue grant of letters of administration forthwith and the administrators so appointed directed to proceed to confirm the grant within 6 months from the date of the Ruling.”

15. What was to follow after this ruling was an application to confirm the grant that was to be issued. The grant was issued in the names of the 2 administrators as was ordered by the court. The application to confirm the grant, the subject of this Ruling, was filed by Richard. Richard did not appeal against the Ruling dated 12.5.2020. The said Ruling decided the issue raised by the 1st administrator in their submissions that the land was not held in trust. (see paragraph 13 of this Ruling). I cannot make another ruling/finding on the said issue as it would be res judicata and/or sitting on appeal on the said issue.
16. The only issue for determination therefore is the mode of distribution of land parcel Elgon/ Kaptama/ 320 which measures 10 Ha (24.7 acres). Parcel no. 319 was not an issue before Justice Aroni. The objector's claim is over parcel number 320, not 319. The beneficiaries are the house of Masai Salimbani and Jason Tumweti Masai. The 2 administrators have given their modes of distribution.



17. I note that the 1st administrator called a surveyor who informed this court that Richard's family occupies the entire parcel of land. In her report dated 22.4.2022 Ms. V. A. Asikuye stated as follows;

“Re: Surveyor’s Report- Kaptama 320

“ Surveyor’s visited the above parcel for purposes of ground verification through area chief’s request.

The boundaries for the above parcel were picked and acreage tabulated that confirmed with records at lands. Total acreage as per records 10Hac whilst ground/picked acreage 9.82 hac approximately.

Please assist the family complete the succession process as they occupy the whole of Kaptama 320.

Please see the attached”.

18. Though the letter indicates that the “family” occupies the land, she did admit that there are boundary issues between the 2 families. The ruling was that Richard’s father held the land in trust for Jason’s family. Richard’s mode of distribution is not a fair and just mode of distribution as it has entirely left out the family of Jason who is entitled to a share of the suit land. Considering that the 2 families are to share the land, I find that Kundos mode of distribution is a fair and just one. The estate of the late Masa Salimbani shall be distributed as follows;

- a. Masai Salimbani Family.....8.7 acres to be shared amongst the beneficiaries.
- b. Jason Masai Tumwet Family...16 acres
 - 1st House
 - i. Ruth Chemtai Masai - 1 ½ acres
 - ii. Hellen Chesabiny Masai - 1 ½ acres
 - iii. Chepkwemoi Betronilla Masai - 1 ½ acres
 - 2nd House
 - i. Marita Chepkarat Jason (Alive) - 2 acres
 - ii. Bramwel Tulei Chepkorot -1 ½ acres
 - iii. Doctor Jason Masai (deceased)
(Lucy Nasambu & Jason Mazoloz) - 1 ½ acres
 - iv. Mang’eny Masai - 1 ½ acres
 - v. Peter Tulei - 1 ½ acres
 - vi. Joseph Kundos Tueli - 3 ½ acres

19. Each party shall bear its costs. The administrators are to wind up the estate of the deceased and to tender a report on the same in court within 6 months in compliance with the provisions of Section 83 (g) of the *Law of Succession Act*.

DATED , SIGNED, AND DELIVERED AT BUNGOMA ON THIS 14TH DAY OF AUGUST 2024.

R.E.OUGO



JUDGE

In the presence of:

1st Administrator - Absent

Mr. Aлови -For the Objectors

Diana -C/A

