



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of Henry Medosi Masake (Deceased) (Succession Cause
258 of 2014) [2024] KEHC 11461 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11461 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 258 OF 2014**

DK KEMEL, J

SEPTEMBER 30, 2024

IN THE MATTER OF HENRY MEDOSI MASAKE (DECEASED)

BETWEEN

WASHINGTONE OSAIRI MASAKE 1ST PETITIONER

BENARD MASAKE 2ND PETITIONER

AND

EMMANUEL MASAKE & OTHERS OBJECTOR

RULING

1. The Objectors/Applicants herein filed an application dated 25th November 2023, pursuant to Rule 47 of the [Law of Succession Act](#) seeking the following reliefs: -
 - a. That this Honourable Court be pleased to cancel the Title Deeds issued to:
 - i. Benard Masake on 4th March 2019 in respect of land parcel No. N. Malakisi/ W. Sasuri/3494
 - ii. Washington Osaïri Masake on 15th December 2015 in respect of land parcel No. N. Malakisi/ W. Sasuri/200.
 - iii. Fredrick Chepkurui on 21st May 2009 in respect of land parcel No. N. Malakisi/ W. Sasuri/1781.
 - b. That upon grant of prayer (a) hereinabove, the Title Deed do revert to Henry Medosi Masake(deceased).
 - c. That the costs of the Application be provided for.



2. The application is supported by the grounds set out on the face thereof and by the supporting affidavit of Emmanuel Masake, the Objector, sworn on even date on his behalf and on behalf of the 2nd Petitioner. The Objectors gravamen is inter alia; that the deceased herein Henry Medosi Masake was the registered owner of land parcel No. N. Malakisi/ W. Sasuri/3494,200 & 1781 prior to his demise; that the deceased died on 1st April 2010; that Bernard, Washington and Fredrick illegally and unlawfully caused parcel numbers N. Malakisi/ W. Sasuri/3494,200 & 1781 to be transferred to their names respectively without valid succession proceedings; that he and his co-Petitioner were finally issued with a grant of letters of administration intestate and that they now wish to proceed with confirmation thereof; that the transfer of the said property to their names was not only illegal but fraudulent; that the act of transferring the said land without valid succession proceedings amounts to intermeddling with the property of the estate of the deceased; that it is in the interest of justice that the registration of Benard Masake on 4th March 2019 in respect of land parcel No. N. Malakisi/ W. Sasuri/3494, Washington Osairi Masake on 15th December 2015 in respect of land parcel No. N. Malakisi/ W. Sasuri/200 and Fredrick Chepkurui on 21st May 2009 in respect of land parcel No. N. Malakisi/ W. Sasuri/1781 be cancelled so that the same reverts to the name of the deceased Henry Medosi Masake.
3. The Petitioners strongly opposed the application vide a replying affidavit sworn on 15th April 2024 by Benard Masake. It is imperative to note that the said fees for filing this pleading has not yet been paid for which simply means the Objectors' application is unopposed as the said replying affidavit is not properly on record.
4. The application was canvassed by way of written submissions. Only the Objectors duly complied.
5. Having looked at the application, and the Objectors submissions, the only issue for determination is whether the Objectors application has merit.
6. Pursuant to Section 82 (b) (11) of the *Law of Succession Act*, it is provided that no immovable property of a deceased person shall be sold before confirmation of grant. Hence, any sale and transfer of land belonging to the estate of the deceased amounts to intermeddling with such an estate and is a punishable offence under Section 45 of the said Act. It is instructive that the grant herein is yet to be confirmed and as such, any dealing with the property of the deceased before confirmation is frowned upon by the *Law of Succession Act*. From the averments of the Objectors, registration of Benard Masake on 4th March 2019 in respect of land parcel No. N. Malakisi/ W. Sasuri/3494, Washington Osairi Masake on 15th December 2015 in respect of land parcel No. N. Malakisi/ W. Sasuri/200 and Fredrick Chepkurui on 21st May 2009 in respect of land parcel No. N. Malakisi/ W. Sasuri/1781 clearly indicate that the same were done prior to the confirmation of grant issued on 5th August 2022. I find the actions of 2nd Petitioner, 1st Petitioner and Fredrick Chepkurui to amount to intermeddling with the estate of the deceased herein. In the case of *Munyasia Mulili & 3 others -Vs Sammy Muteti Mulili* (2017) eKLR the court held as follows:-

“... No immovable property shall be sold before confirmation of grant. Any such distribution of the deceased's properties before confirmation of grant whether by way of registration of title or sale is thus liable to revocation pursuant to the powers granted to this court by section 47 of the Laws of Succession Act and rule 73 of the *Probate and Administration Rules*”.
7. From the foregoing, it is clear that all the assets of the deceased should be dealt with only upon confirmation of grant. This Court has the requisite jurisdiction to entertain the matter and make orders as appropriate as regards the estate of the deceased.



8. As the estate of the deceased is yet to be distributed and since the 2nd Petitioner, 1st Petitioner and Fredrick Chepkurui proceeded to transmit the ownership of the title to their respective names and even sell to purchasers without the grant being confirmed, it is my considered view that the proper course of action is to have the titles in possession of the 2nd Petitioner, 1st Petitioner and Fredrick Chepkurui cancelled and to revert in the name of the deceased for distribution together with other assets.
9. In view of the foregoing observations, i find merit in the Objectors application dated 25th November 2023. The same is allowed in the following terms: -
- i. The title of Benard Masake in respect of land parcel No. N. Malakisi/ W. Sasuri/3494 be and is hereby cancelled and that the same do revert in the name of the deceased Henry Medosi Masake.
 - ii. The title of Washingtone Osairi Masake in respect of land parcel No. N. Malakisi/ W. Sasuri/200 be and is hereby cancelled and that the same do revert in the name of the deceased Henry Medosi Masake.
 - iii. The title of Fredrick Chepkurui in respect of land parcel No. N. Malakisi/ W. Sasuri/1781 be and is hereby cancelled and that the same do revert in the name of the deceased Henry Medosi Masake.
 - iv. The County Land Registrar Bungoma is hereby ordered to execute the orders herein forthwith.
 - v. The summons for confirmation of grant dated 14th November 2022 and the affidavit of Protest dated 6th April 2023 and 10th July 2023 are hereby fixed for directions on 22nd October, 2024.
 - vi. Each party to bear their own costs.

Orders accordingly.

DATED AND DELIVERED AT BUNGOMA THIS 30TH DAY OF SEPTEMBER 2024

D. KEMEI

JUDGE

In the presence of :

Oriko for Makali for Petitioners/Respondents

Wanjala for Were for Objectors/Applicants

Kizito Court Assistant

