



In re Estate of Richard Wekesa Wanjala (Deceased) (Succession Cause 94 of 2024) [2024] KEHC 11452 (KLR) (30 September 2024) (Ruling)

Neutral citation: [2024] KEHC 11452 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 94 OF 2024**

DK KEMEL, J

SEPTEMBER 30, 2024

IN THE MATTER OF THE ESTATE OF RICHARD WEKESA WANJALA (DECEASED)

BETWEEN

DOROTHY SYLVIA WEKESA 1ST APPLICANT

ROSELINE WEKESA 2ND APPLICANT

LINNET NEKESA WEKESA 3RD APPLICANT

AND

DANIEL NYONGESA WEKESA 1ST OBJECTOR

FREDRICK WEKESA 2ND OBJECTOR

RULING

1. Vide an application dated March 18, 2024, the Applicants herein sought orders to have this Honourable Court reinstate this succession cause that had been dismissed for want of prosecution and that this Court issues preservatory orders staying the distribution, intermeddling and/or transmission of land parcel W. Bukusu/S.Mateka/5406 within Bungoma County. It also sought for an order striking out all that parcel of land known as W.Bukusu/S.Mateka Bungoma County Lr. No. 5406 from forming part of the estate of Joyce Oluoch Wekesa in Bungoma Magistrate's court Succession Cause No. E074 of 2021.
2. The application was premised on the grounds on the face of the application and the affidavit in support sworn by the 1st Applicant herein on 18th March 2024. The Applicants' gravamen are inter alia; that the administrator Joyce Aluoch Wekesa who is their mother has since passed on without completing the exercise of transmission of the estate to the respective beneficiaries; that the estate remains un-administered since February, 2020 and risks going to waste; that any activities on the estate amounts to intermeddling which is punishable by law; that the confirmed grant issued to the deceased



administrator has since become useless and inoperative; that the Respondents have filed a succession cause in the lower court being Cause No. E074 of 2021 in the estate of the deceased administrator Joyce Aluoch Wekesa wherein they have listed one of the deceased's asset among the administrator's assets; that the said deceased administrator had transferred the land parcel in question to herself and was thereafter to transfer to the beneficiaries but unfortunately passed on and thus the said asset forms part of the deceased's properties and not the deceased administrator.

3. Responding to the application, the 1st Objector swore a replying affidavit dated 26th April 2024, wherein he contended that the administrator of the estate of the deceased herein carried out the succession to its logical conclusion and that the grant was confirmed on 16th March 2007 and later amended on 9th February 2009. He contends that the Administrator herein who was his late mother died when she had already completed administration and that the remaining aspect was to ensure that each party gets their respective shares. He also contends that the land parcel No. W.Bukusu/S. Mateka/5406 is not part of the estate of the deceased as per the certificate of confirmation of grant. It was further contended that there is no way the said parcel can be part of this cause yet it had not been registered in the name of the deceased herein. It was finally contended that the Applicants are not genuine yet they had financed the deceased administrator to be registered as owner of parcel S.MATEKA/KABULA/1368 which was in the name of one James Karori Namachanja and which was duly distributed to all the beneficiaries.
4. In response to the replying affidavit, the Applicants vide the 1st Applicant swore a supplementary affidavit dated 27th May 2024, wherein she averred that the replying affidavit is inadequate and unattainable. According to her, the grant was rendered inoperative and incapable of being successfully administered once the Administrator died thus the need to reinstate the cause.
5. She averred that the administrator of the estate refused to capture Land Parcel No. W. Bukusu/S. Mateka/1698 as part of the assets of the deceased and relied on the green card annexed and marked as DSW-1 dated 4th April 2024. She insisted that the administrator, her late mother, fraudulently transferred Land Parcel No. W. Bukusu/S. Mateka/1698 to her name and that the same was never included as one of the assets of the deceased. She relied on the green card annexed and marked as DSW-2 dated 4th April 2024. Furthermore, she averred that land parcel No. W. Bukusu/S. Mateka/5406 is subject of succession proceedings in Bungoma Magistrate's Court Succession Cause No. E074 of 2022- In the Matter of the Estate of Joyce Aluoch Wekesa as the same was as a result of a sub-division of Land Parcel No. W. Bukusu/S. Mateka/1698 which was registered in the name of the deceased herein. She relied on the green card annexed as DSW-3 dated 4th April 2024.
6. She contends that the mother title was Land Parcel No. W. Bukusu/S. Mateka/1698 which was later sub-divided into two portions Land Parcel No. W. Bukusu/S. Mateka/4437 and Land Parcel No. W. Bukusu/S. Mateka/4438. Land Parcel No. W. Bukusu/S. Mateka/4438 was sold and that Land Parcel No. W. Bukusu/S. Mateka/4437 was further sub-divided into Land Parcel No. W. Bukusu/S. Mateka/4647 and Land Parcel No. W. Bukusu/S. Mateka/4648, with Land Parcel No. W. Bukusu/S. Mateka/4648 being sold to a third party. Land Parcel No. W. Bukusu/S. Mateka/4647 was further sub-divided into two portions namely Land Parcel No. W. Bukusu/S. Mateka/4726 and Land Parcel No. W. Bukusu/S. Mateka/4728 and that the Administrator sold and transferred Land Parcel No. W. Bukusu/S. Mateka/4728. That Land Parcel No. W. Bukusu/S. Mateka/4726 was further-subdivided into Land Parcel No. W. Bukusu/S. Mateka/5397 and Land Parcel No. W. Bukusu/S. Mateka/5398. That Land Parcel No. W. Bukusu/S. Mateka/5398 was later sold while Land Parcel No. W. Bukusu/S. Mateka/5397 was further sub-divided resulting into two portions namely: Land Parcel No. W. Bukusu/S. Mateka/5406 and Land Parcel No. W. Bukusu/S. Mateka/5407. She referred the Court to



the annexed and marked green cards DW-4 for parcels Land Parcel No. W. Bukusu/S. Mateka/5406 and Land Parcel No. W. Bukusu/S. Mateka/5407.

7. The application was canvassed by way of written submissions. Both parties duly complied.
8. I have carefully considered the application, the affidavits tendered by both parties herein, and their rival submissions. I find the main issue for determination is whether this Court can issue the orders sought.
9. It is imperative to note that the application dated 18th March 2024 seeks to reinstate a succession cause that is still ongoing. It is clear that no evidence has been availed that each party has had their respective portions physically allocated to them and a title to that effect generated. This simply means that the Succession Cause of the estate of the deceased had not yet been concluded.
10. I wish to note that some of the averments as raised by the Applicants herein clearly cannot be dispensed with by this Court under the filed pleading. It is clear that the Applicants claims raise serious issues like the fraudulent and illegal transfer of the deceased's property to the late Administrator and the exclusion of assets that clearly belong to the estate of the deceased from the Petitioning documents. This clearly means that the Applicants ought to approach this Court with the correct pleadings for purposes of deliberation.
11. I'm alive to provisions of Section 73 of the *Probate and Administration Rules* which provides that:
 - “73. Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
12. It must be noted that the object of the Court is to uphold substantive justice. It is my considered view that substantive justice will be done by ensuring that the alleged assets that were left out when the proceeds of the suit property truly belonged to the estate of the deceased herein and if the Administrator had the requisite authority, Confirmed Grant, at the time she transferred the alleged assets to her name and even sold some of them.
13. This Court cannot issue preservative orders with regard to property that is clearly not part of the estate of the deceased that was distributed as the same is strange to it. The alleged assets were not listed in the initial petition forms and they might be in names of third parties who have not been roped into these proceedings. As regards the issue of one of the properties listed in the estate of the deceased administrator being claimed as an asset of the deceased herein, the Applicants are at liberty to challenge the same before the lower court where the cause has been filed. Either way, the Applicants would need to move the court appropriately in order to obtain the orders sought.
14. In view of the foregoing observations, it is my finding that the Applicants' application dated 18th March, 2024 lacks merit. The same is dismissed. As parties are members of one family, i order 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 :

Kinyua for Applicants



Wanjala for Wamalwa Simiyu for Respondents

Kizito Court Assistant

