



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of the Late Kipsiele Maiga (Deceased) (Succession Cause 69 of 2004) [2024] KEHC 13227 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13227 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 69 OF 2004
JK SERGON, J
OCTOBER 30, 2024**

IN THE MATTER OF THE ESTATE OF THE LATE KIPSIELE MAIGA (DECEASED)

BETWEEN

SHADRACK KIPLANGAT SIELE PETITIONER

AND

LAND REGISTRAR-BOMET 1ST PROPOSED INTERESTED PARTY

ATTORNEY GENERAL 2ND PROPOSED INTERESTED PARTY

RULING

1. The application coming up for determination is a notice of dated 23rd August, 2022 seeking the following orders;
 - (i) That the 1st and 2nd proposed interested parties herein be enjoined to the proceedings herein.
 - (ii) That pending hearing and determination of this application, this honourable court be pleased to order the land registrar Bomet County to file a report pertaining the status of the parcel of land formerly registered as Kericho/Silibwet/59 and its green card.
 - (iii) That this honourable court be pleased to cancel titles of the parcel of lands registered as Kericho/Silibwet/5028-5033 and the deceased's parcel of land registered as Kericho/Silibwet/59 be reinstated for purposes of complying with the grant of court dated 7th December, 2021.
 - (iv) That the court do make any other or further orders in the interest of justice.
 - (v) That the costs of this application be provided for.



2. The application is premised on the grounds set out on the face of it and the facts deponed in the the supporting affidavit of Shadrack Kiplangat Siele, the petitioner and the administrator of the deceased's estate.
3. The applicant avers that the enjoinder of the 1st proposed interested party is necessary for purposes of ensuring that the orders of court dated 7th December, 2021 are fully executed.
4. The applicant avers that the 1st proposed interested party issued titles to beneficiaries out of the deceased's estate without following due process and procedure and annexed a certified copy of the green card.
5. The applicant avers that the deceased's estate Kericho/Silibwet/59 was subdivided to create other illegal titles Kericho/Silibwet/5028-5033 by the 1st proposed interested party which have become a hindrance in ensuring that the order of court dated 7th December, 2021 are complied with.
6. The applicant avers that the beneficiaries of the deceased's estate stand to suffer irreparable loss and damage if the orders sought herein are not granted.
7. When the application came up for inter partes hearing, Mr. Mugumya Learned Counsel for the Petitioner/Applicant stated that the application was served upon the interested parties, but the same did not attract any response. The Learned Counsel urged this Court to allow the application in terms of prayer 3 and proceeded to abandon the rest of the prayers.
8. This court directed the Petitioner/Applicant to file submissions in support of the application.
9. The Petitioner/Applicant submitted that the 1st proposed interested party without following due process and procedure, proceeded to subdivide the deceased's estate and created illegal titles with respect to Kericho/Silibwet/59. The subdivision has become a hindrance in ensuring that court orders are executed, specifically the orders of this court dated 7th December, 2021.
10. The Petitioner/Applicant contended that the property of the deceased was subdivided and transferred to new proprietors yet the registered proprietor was deceased. The correct procedure dictates that any person that dies intestate leaving property, the property has to undergo transmission according to the Law of Succession Act. The Petitioner/Applicant cited the provisions of section 45 of the Law of Succession Act which prohibit intermeddling with any free property of a deceased.
11. The Petitioner/Applicant appealed to the inherent power of the probate court donated by the provisions of section 47 of the Law of Succession Act and rule 73 of the Probate and Administration Rules. The said sections clothe this court with power to make such orders as may be necessary for the ends of justice or to prevent abuse of court of process such as the cancellation of titles obtained fraudulently. The Petitioner/Applicant cited the case of Santuzza Bilioti alias Mei Santuzza (Deceased) v Giancarlo Falasconi [2014] eKLR, where the High Court at Malindi stated that; "the succession court has powers to order a title deed to revert to the names of a deceased person. This in effect amounts to cancellation of the title deed. Further, a succession court can order a cancellation of a title deed if a deceased's property is being fraudulently taken away by non-beneficiaries such as where the property is being sold before a grant is confirmed."
12. The Petitioner/Applicant therefore urged this court to invoke the provisions of section 80 (1) of the Land Registration Act, No 3 of 2012 and order for the cancellation of titles of parcels of land registered as Kericho/Silibwet/5028-5033 and the deceased's parcel of land registered as Kericho/Silibwet/59 be reinstated.



13. This court has considered the application and the submissions filed herein and finds that the sole issue for determination is whether to cancel titles of the parcel of lands registered as Kericho/Silibwet/5028-5033 and order that the deceased's parcel of land registered as Kericho/Silibwet/59 be reinstated for purposes of complying with the rectified certificate of confirmation of grant dated 7th December, 2021.
14. This court has perused the file and keenly scrutinized a copy of green card that was annexed to the application and noted the transactions on the proprietorship section of green card in question are as follows; the subject parcel was registered to Kipsiele Maiga the deceased herein. Upon his demise, the subject parcel was registered in names of Joel Kibii Siele and Shadrack Kiplangat the administrators of the estate of the deceased pursuant to the instant succession proceedings and the subject parcel closed and subdivided into Kericho/Silibwet/5028-5033.
15. The applicant alleges that the Land Registrar issued out titles to beneficiaries out of the deceased's estate without following due process and procedure. However, it is the finding of this Court that the Land Registrar Bomet effected the transactions on the subject property pursuant to these succession proceedings, therefore the said transactions are not tantamount to intermeddling.
16. This court is cognizant of the provisions of section 47 of the *Law of Succession Act* and rule 73 of the Probate and Administration Rules which donate powers to the probate court to make such orders as may be necessary for the ends of justice or to prevent abuse of court of process. However, the applicant in this case has not aptly demonstrated that the cancellation of title and new titles were obtained fraudulently and /or without following due process and procedure thereby warranting the intervention of this court.
17. In the light of the foregoing, the application dated 23rd August, 2022 is found to be without merit, it is hereby dismissed with no orders as to costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 30TH DAY OF OCTOBER, 2024.

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J.K. SERGON

JUDGE

In the presence of:-

C/Assistant – Rutoh

No Appearance for the Parties

