



In re Estate of Estate of Michael Nakhokho Wabomba (Deceased) (Probate & Administration 165 of 2011) [2024] KEHC 14977 (KLR) (29 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14977 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
PROBATE & ADMINISTRATION 165 OF 2011**

DK KEMEL, J

NOVEMBER 29, 2024

IN THE MATTER OF THE ESTATE OF MICHAEL NAKHOKHO WABOMBA (DECEASED)

BETWEEN

PATRICK NYONGESA NAKHOKHO 1ST PETITIONER

WILLIAM WAFULA FRANCIS 2ND PETITIONER

DAVID KHISA WABOMBA 3RD PETITIONER

AND

PATISTA NABWILE KUNDU OBJECTOR

RULING

1. The Objector herein filed an application dated 20/12/2023 pursuant to Section 47 of the Law of Succession Act and Rules 49 and 73 of the Probate and Administration Rules, Section 3 and 3A of the Civil Procedure Act and all other enabling provisions of the law seeking orders *inter alia*: that the registration of parcel number East Bukusu/West Sang'alo/2880 in the names of the Petitioners herein and any other subsequent transfers to third parties be cancelled and that the same do revert to the name of the deceased herein forthwith and be available for transmission and/or transfer of the 1¾ acres to the Objector; that the Court be pleased to direct and/or order the Petitioners herein to sign all transfer documents to have the land measuring 1¾ acres to be hived from land parcel No. East Bukusu/West Sang'alo/2880 registered in the Objectors name; that the Deputy Registrar of this Honourable Court to sign all the transfer documents on behalf of the Petitioners herein and vest land measuring 1¾ acres to be hived from land parcel No. East Bukusu/West Sang'alo/2880 into the names of the Objector.
2. The application is premised on the grounds on its face and further on the supporting affidavit sworn by the Objector/Applicant herein. In a nutshell, it is the Objector's case that she is one of the beneficiaries to the estate of the deceased herein. According to her, upon the confirmation of grant on 4th May 2017, the Objector was allocated 1¾ acres from the land parcel No. East Bukusu/West Sang'alo/2880. She



averred that the Petitioners are desirous in disinheriting the Objector by sub-dividing the said land parcel No. East Bukusu/West Sang'alo/2880 to her exclusion and that they have not transferred her apportioned parcel to her. She contended that due to the said actions she is unable to secure a title to her rightful share. She finally maintained that land parcel No. East Bukusu/West Sang'alo/2880 was successfully sub-divided into East Bukusu/West Sang'alo/7521-7527 and that none of the new numbers have been registered in the Objector's name.

3. In response to the application, the 1st and 3rd Petitioners swore a replying affidavit on 5th February 2024, wherein they deponed inter alia; that the orders sought by the Objectors herein cannot be granted as the certificate of confirmation of grant dated 10th May 2017 was executed procedurally as prescribe; that according to the Petitioners, the Objector failed to disclose sufficiently the extent upon which the process of sub-division was conducted and that the Objector was not aware of the mutation form No. 043901 due to her unavailability and lack of interest; that her share is duly catered for under mutation form No. 043901 which is proof of the existence of land Parcel No. E. Bukusu/w. Sangalo/8288, though not registered and transferred to her name as the same is unregistered; that the Objector was a no show at the time of executing the grant thus the failure to ensure the registration of her 1¼ acres; that land Parcel No. E. Bukusu/w. Sangalo/2880 was sub-divided into land parcels Numbers. E. Bukusu/W. Sangalo/7521, 7522, 7523, 7526 and 7527 and that the Objector's portion lies within land parcel E. Bukusu/W. Sangalo/7521; that the Objector was not interested in transferring and registering for her own title deed and that at the time of sub-division she was not present; that the Objector's 1¼ acres is catered for under land parcel No. E. Bukusu/W. Sang'alo/7527 upon sub-division; that land parcel No. E. Bukusu/W. Sang'alo/7527 was sub-divided into land parcel Numbers. E. Bukusu/W. Sang'alo/8288, 8289, 8290, 8291, 8292 and 8293 and that title deeds are yet to be issued; that the Objector was allocated her 0.75 ha share under land parcel No. E. Bukusu/W. Sang'alo/8288 and that the same is yet to be registered as title deeds have not been issued; that the Objector herein reserves the right to seek for transfer and registration of the said land parcel No. E. Bukusu/W. Sang'alo/8288 under her name once the sub-division exercise is completed.
4. The application was canvassed by way of written submissions wherein only the Petitioners submitted in support of their rival positions.
5. I have considered the application as well as the rival affidavits and submissions. The issue for determination is whether the application has merit.
6. Generally, the issue as to ownership or title to land is under the jurisdiction of the Environment and Land Court (See Article 162(2)(b) of the *Constitution* and Section 13(2) of the *Environment and Land Court Act* of 2011. However, in the instant case, the registration of the said titles was pursuant to the certificate of confirmation of grant issued by this Court (probate Court) on 10th May 2017. In essence, the registration of the said titles in the names of the respective beneficiaries of the estate of the deceased, including the Objector, means that the estate of the deceased is being administered by the Petitioners. The *Law of Succession Act* was enacted to amend, define and consolidate the law relating to intestate and testamentary succession and the administration of estates of deceased persons and for purposes connected therewith and incidental thereto.
7. Under Section 47 thereof, this Court has jurisdiction to entertain any application and determine any dispute under the Act and pronounce such decrees and make such orders therein as may be expedient. Further under Rule 73 of the *Probate and Administration Rules*, this Court has inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. As such, the Court has wide powers to preserve the estate for the benefit of other beneficiaries and for the due process to be followed in the distribution of the same.



8. In exercising of the said powers, this Court has powers to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets. It is my view that in the instant application, the Petitioners are in the process of executing the certificate of confirmation of grant issued by this Court on 10th May 2017. According to the Petitioners, the allocated portion of the Objector herein, 1 ¼ acres or 0.75 Ha, was duly catered for under land parcel E. Bukusu/W. Sang'alo/8288 and that the same was not yet registered and a title deed not issued as she was not present when the same exercise was being conducted by the other beneficiaries and efforts to locate her were in vain. It was also the contention of the Petitioners that the process of issuance of titles is yet to be concluded since it is only the closure of subdivision which has been concluded.
9. Also, it is imperative to note that the Petitioners swore that the Objector reserves the right to seek for transfer and registration of land parcel E. Bukusu/W. Sang'alo/8288 to her names upon completion of the sub-division and other processes thereon at her own cost.
10. It is noted that the Objector herein has not raised any pertinent issues and has failed to prove the alleged fraud on the part of the Petitioners. Upon perusal of the availed mutation form No. 043901 by the Petitioners, it is clear that the Objector's share of 0.75 HA was duly catered for and that a sketch of the new boundaries were availed. It is therefore her duty to follow up with the registration and securing of a title deed of her share. She has not explained to this Court why she was not with the other beneficiaries when they were following up on the sub-division process but that is water under the bridge since the process is almost at the tail end and that titles will soon be issued. It seems the Objector's worries are unfounded since her share and size of land are intact. She should wait for the processes to be concluded and that she could then approach the court if it doesn't work in her favour. It would appear to me that the Objector is out to scuttle the process at the eleventh hour and there is thus a possibility that she has beef with the Petitioners. I find that allowing the application will further delay the finalization of the matter which is at the conclusion stage. The Objector should proceed and liaise with the land department with a view to having her land parcel E. Bukusu/W. Sangalo/8288 recorded in her names.
11. In view of the foregoing observations, it is my finding that the Objector's application dated 20/12/2023 lacks merit. The same is dismissed. Each party to bear their own costs.

DATED AND DELIVERED AT SIAYA THIS 29TH DAY OF NOVEMBER, 2024.

D. KEMEI

JUDGE

In the presence of:

N/A Ateyafor Petitioners

Paul Juma.....for Objector

Kizito/OgendoCourt Assistant

