



REPUBLIC OF KENYA



**In re Estate of Mamira Sesi (Deceased) (Succession Cause 103 of 2021)
[2024] KEHC 14872 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14872 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
SUCCESSION CAUSE 103 OF 2021
JN KAMAU, J
NOVEMBER 28, 2024
IN THE MATTER OF THE ESTATE OF MAMIRA SESI (DECEASED)**

BETWEEN

JOHNSTONE EREGWA MUTASHI PETITIONER

AND

ALFRED AKINGA ASAVA BENEFICIARY

RULING

Introduction

1. In his Chamber Summons application dated 20th March 2024 and filed on 9th April 2024, the Beneficiary herein sought that a conservatory order do issue prohibiting the alienation, sub-division, sale, transfer, disposition, his eviction or interference with his occupation of the property parcel number Tiriki/Cheptulu/66 (hereinafter referred to as the “subject property”) and that any sale, sub-division, transfer or registration of the subject property be revoked and the same revert back into the name of the deceased.
2. He swore an Affidavit in support of the said application on 20th March 2024. He averred that he was a grandson to the deceased and was in occupation of the subject property. He stated that sometimes in the year 2023, he discovered that on 19th January 2015, the Petitioner used the Grant of Letters of Administration to transfer the subject property into his name.
3. He contended that a letter was written to the Land Registrar, Vihiga on 25th July 2023 to explain how the transfer was done before the confirmation of the Grant of Letters of Administration but he had never responded to the same. It was his contention that the said transfer was illegal and had denied other beneficiaries from inheriting the deceased’s estate.
4. He was categorical that he was entitled to benefit from the portion that belonged to his father who was a son to the deceased. He was apprehensive that he would be evicted from the subject property.



5. He asserted that this court had the power to revoke the illegal transfer and prayed that an order of restriction be registered in the said subject property.
6. The Petitioner swore a Replying Affidavit on 31st May 2024 in opposition to the said application. The same was filed on 7th June 2024. He averred that the Beneficiary's father, Hezron Asava Mamira and his father, the late Andrea Mutashi Mamira were sons to the deceased herein.
7. He denied having transferred the subject property and averred that the transfer was done to him by way of transmission from the deceased to the Administrator (sic) and was thus based on the Grant of Letters of Administration.
8. He also denied having sold any part of the subject property and stated that it was in fact, the Beneficiary and his brother, one Edward Shumah Asava, who had sold their shares of the said subject property to one Peter Ingatima Indeche. He added that upon selling their portion, they handed vacant possession to the said Peter Ingatima Indeche who was using the said subject property.
9. He said that he was aware that he could only sub-divide the said subject property upon this court confirming the grant, a process which he had commenced. He pointed out that the distribution witnessed in his application for confirmation of grant was based on the existing boundaries that were planted by the deceased.
10. He admitted that the Applicant was a beneficiary of the deceased's estate and that together with his brother had agreed that he include the buyer, the said Peter Ingatima Indeche, in their place in the mode of distribution in his application for confirmation of grant to which he had no objection.
11. The Applicant's Written Submissions were dated 20th June 2024 and filed on 21st June 2024. Despite having been given the time to file his Written Submissions and ensure the same are placed in the court file, the Petitioner's Written Submissions were not in the court file at the time of writing this Ruling. The same were also not in the e-filing portal. This Ruling is therefore based on the parties' affidavit evidence and the said Applicant's Written Submissions.

Legal Analysis

12. The Applicant placed reliance on the case of *Re Estate of Sarah Chitambe* [2016] eKLR where it was held that the provisions of Section 50 (1) of the Property Act Cap 280 (Laws of Kenya) as read with Section 79 of the *Law of Succession Act* Cap 160 (Laws of Kenya) did not confer legal interest to an administrator of a deceased's estate to register the deceased's estate in his name until after the grant of letters of administration had been confirmed.
13. He also relied on the case of *Re Estate of Andashe Munyi (Deceased)* [2021] eKLR where it was held that after a grant was confirmed and a certificate of confirmation was issued, the next step would be transmission of the property in accordance with the distribution in the said certificate. The court added that transmission was not a process provided for under the *Law of Succession Act* but under the Property Registration *Act No 3 of 2012*.
14. He argued that the Petitioner's allegation of the existence of a sale did not change the fact that a property could not be transferred before confirmation of grant because if done before, it removed the deceased's interest on the subject property. It urged this court to revert the subject property into the name of the deceased for completion of the succession process.
15. The Grant of Letters of Administration intestate herein was issued to the late Mutashi Mamira on 15th April 2003. The said Grant was confirmed by Chitembwe J on 21st February 2012. A perusal of



- the Certificate of Grant dated 21st February 2012 indicated that the subject property herein was not included as part of the deceased's estate that was available for distribution.
16. The Applicant annexed an Official Search dated 27th June 2023 to his application which indicated that the subject property was registered in the name of Mutashi Mamira, the Petitioner's father, as the proprietor as at 19th January 2015. The said Mutashi Mamira (deceased) was the initial Petitioner but died on 4th November 2021. He was then substituted by the Petitioner herein.
 17. The Petitioner annexed, in his Replying Affidavit, Form R.L No 19 in which his father had sought to be registered as proprietor by transmission of the subject property herein.
 18. Notably, the subject property herein was omitted as one of the deceased's estate and had therefore not been distributed and/or confirmed by any grant. This court therefore agreed with the Beneficiary that it was illegal and/or unlawful for the Petitioner's father to have transferred the said subject property to himself without going through the succession process.
 19. Section 55(1) of the *Law of Succession Act* states that:

“No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets, or to make any division of property, unless and until the grant has been confirmed as provided in section 71”.
 20. Under the *Law of Succession Act*, an administrator could only exercise those powers subject to the limitations imposed by the grant. The Petitioner's father had no authority to transfer the deceased's subject property to himself without a confirmed grant of letters of administration. His actions amounted to intermeddling of the estate of the deceased as was provided in Section 45 of *Law of Succession Act* which states as follows:-

“No person shall, for any purpose, take possession...or..intermeddle with, any free property of a deceased...”
 21. The Petitioner's father's actions exceeded the administrator's statutory powers outlined in Section 82 and 83 of *Law of Succession Act*. This court had due regard to the case of Paul Rono Pymto & Another vs Giles Tarpin Lyonnet 2014[eKLR] where it was held that administrators had to appreciate that their role was to gather together all the assets and liabilities of a deceased and had no authority to dispose of assets without express orders from the court.
 22. The High Court had inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process under Rule 73 of the Probate and Administration Rules, 1990.
 23. The said Rule 73 of the Probate and Administration Rules provides that:-

“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.”
 24. So as to prevent the abuse of the court process and for the ends of justice, this court could therefore issue orders to safeguard the interests of the estate of the deceased and those of his or her beneficiaries. From the facts of this case, it was evident that the Beneficiary had demonstrated that the Petitioner's father acted illegally and unlawfully and that interests of the deceased's estate were best safeguarded by reverting the title of the subject property to the deceased's name.



Disposition

25. For the foregoing reasons, the upshot of this court's decision was that the Beneficiary's Chamber Summons Application dated 20th March 2024 and filed on 9th April 2024 was merited in terms of prayers No (6) therein. The Registrar of Lands be and is hereby directed to register the subject property in the name of the deceased herein for re-distribution. As this was a family cause, the court deviated from the general rule that costs follow events so as to preserve the family ties.
26. To progress this matter further, the Petitioner be and is hereby directed to file and serve a Summons for Confirmation of Grant by 28th February 2025.
27. It is hereby directed that this matter will be mentioned on 5th May 2025 to confirm compliance and/or for further orders and/or directions.
28. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 28TH DAY OF NOVEMBER 2024

J. KAMAU

JUDGE

