



**In re Estate of Charles David Etyang Ichani (Deceased) (Succession Cause 1 of 2014) [2024] KEHC 14880 (KLR) (27 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14880 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION CAUSE 1 OF 2014  
WM MUSYOKA, J  
NOVEMBER 27, 2024**

**IN THE MATTER OF THE ESTATE OF CHARLES DAVID ETYANG ICHANI (DECEASED)**

**RULING**

1. On 27<sup>th</sup> October 2023, I delivered a ruling herein, where I postponed confirmation of the grant, on several grounds, principally that it sought distribution of assets that were not in the name of the deceased, as there was only 1 asset that was in his name. The postponement was meant to allow the administrators time to resolve the outstanding issues.
2. Richard Rich Ichani, one of the administrators, has now come back to court, with another summons for confirmation of grant, dated 29<sup>th</sup> February 2024. I shall refer to him as the administrator. He seeks 2 prayers: rectification of the grant of letters of administration herein, to add aliases to the name of the deceased, and confirmation of the grant. The principal ground, as appears on the face of the application, is that the deceased went by different names, as reflected in the title deeds. He then goes on to propose distribution of the estate, based on the assets said to be in the name of the deceased, including the aliases.
3. There is an affidavit by the co-administratrix, Redempta Imujaro Amuya, in reaction to that application, dated 29<sup>th</sup> February 2024. She does not indicate whether or not she agrees with the proposals made in that application. She has raised a number of issues. She claims that South Teso/Apokor/1210 was her matrimonial home; while South Teso/Apokor/28 was the matrimonial home of her co-wife, Sabencia A. Ichani. She says that the applicant and his brother had been allocated and settled on more than 7 acres each on South Teso/Apokor/813, which gives them a share which is fairly disproportionately high compared with what the other survivors are getting. She also makes claims against Dominic George Ichani, allegedly that he had built on a portion of South Teso/Apokor/1210, which she claims to be her matrimonial home.
4. She proposes that the applicant should be confined to the more than 7 acres that he occupies on South Teso/Apokor/813, where he has built a permanent house. She also proposes that she should be allocated 6 acres out of South Teso/Apokor/1210, instead of the 2.92 acres proposed by the applicant. She further suggests that the distribution should be expressed in hectares, for that is how the acreage is



reflected in the title documents. I shall treat her reaction to the application, dated 29<sup>th</sup> February 2024, as a protest, and I shall refer to her hereafter as the protestor.

5. I am struggling to understand why the parties in this matter do not follow instructions, and do whatever they choose, despite whatever directions the court gives. At paragraph 14, of my ruling of 27<sup>th</sup> October 2023, I pointed out the discomfort expressed by my predecessors, Kiarie and Karanja JJ, on how the parties hereto have handled the administration, and prosecuted this cause. I address this as the filing of the application, dated 29<sup>th</sup> February 2024, is a clear disregard of the directions that I gave in the ruling of 27<sup>th</sup> October 2023. The applicant, in the application, dated 29<sup>th</sup> February 2024, has chosen to give himself his own directions.
6. At paragraph 13 of the ruling of 27<sup>th</sup> October 2023, I postponed determination of the application for confirmation of grant, dated 6<sup>th</sup> June 2022. To postpone means to adjourn or put off a matter. That meant that that application was not determined on its merits, and it was not dismissed or disposed of either. It is still pending. However, despite the pendency of that application, the applicant has chosen to file another summons for confirmation of grant. This is what is called duplicity, having 2 parallel applications for confirmation of the same grant. If the applicant got new information or material, that he wanted to place on record, what he should have done should have been to file a further affidavit, deposing to that new matter. There was no direction for the filing of a second summons for confirmation of grant. The filing of a summons for confirmation of grant, during the pendency of another, is a case of pure abuse of court process. It is acts, such as these, which have kept this matter stagnated in this court.
7. Let me produce verbatim the purport of paragraph 13 of the ruling of 27<sup>th</sup> October 2023, to remind the applicant of it, just in case he did not read it, or did not understand it. It says:

“I will postpone the disposal of the application, dated 6<sup>th</sup> June 2022, under section 71(2)(d) of the *Law of Succession Act*, Cap 160, Laws of Kenya, to allow time for the administrators to do the needful. I shall give them 3 months or 90 days, to regularize and perfect whatever needs to be regularized and perfected, before the grant is presented afresh for confirmation ...”
8. Secondly, in that ruling of 27<sup>th</sup> October 2023, I had directed that the nature of the application, dated 6<sup>th</sup> June 2022, and the protest to it, were such that it required hearing viva voce. I said that in paragraph 12 of the said ruling, in these words, “The nature of these proceedings is such that the summons for confirmation of grant, and the protest to it, must be disposed of by way of viva voce evidence.” The filing of the application dated, 29<sup>th</sup> February 2024, does not change anything. The parties are still not agreed on distribution, and they cannot run away from a full hearing. They appear to be in a hurry, and have rushed for the short lazy way out. A viva voce hearing has to be conducted.
9. Under Rule 40(8) of the *Probate and Administration Rules*, the court is allowed to confirm a grant without hearing the parties, where no protest affidavit has been filed, the parties have agreed on distribution, and have executed consents in Form 37. Where a protest has been filed, or, if one has not been filed, but there is no agreement on distribution, Rule 41(1) of the *Probate and Administration Rules* kicks in. The matter has to proceed to a formal hearing, where the court is required to conduct a hearing where all the parties are heard. This business of the parties filing an application for confirmation of grant, and affidavits, and the file is passed to the Judge to write a ruling, based on the filings, without hearing the parties, is not contemplated in the *Probate and Administration Rules*. Let the parties present their respective cases the right way, by taking to the witness stand, to breathe life to their filings, and to be tested by way of cross-examination, on their counter-proposals.



10. In this case, a protest affidavit has been filed, the parties are not in agreement on how the estate is to be distributed, and no consents have been filed in Form 37, duly executed by all the survivors of the deceased and the beneficiaries of the estate. In the circumstances, I cannot dispose of the matter in terms of Rule 40(8) of the *Probate and Administration Rules*, for I am bound to handle it in terms of Rule 41(1) of the *Probate and Administration Rules*. There is no room for me to just write a ruling without having heard the parties.
11. As the application, dated 29<sup>th</sup> February 2024, was filed in abuse of the court process, against directions that had been given earlier, it ought to be struck out. I shall refrain from taking that route, given that it also seeks rectification of the grant. Ideally, the applicant should have filed a summons for rectification of the grant, instead of a second summons for confirmation of grant. I shall, accordingly, allow the prayer for rectification of the grant. I shall not determine the prayer on confirmation, instead I shall consolidate the application, dated 6<sup>th</sup> June 2022, with that dated 29<sup>th</sup> February 2024, for disposal viva voce, on 15<sup>th</sup> January 2025. Parties shall be at liberty to file further papers, on confirmation, should they be so minded. Orders accordingly.

**DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 27<sup>TH</sup> DAY OF NOVEMBER 2024.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Ms. Eva Adhiambo, Legal Researcher.

Advocates

Mr. Onsongo, instructed by Obwoye Onsongo & Company, Advocates for the applicant.

Mr. Wanyama, instructed by Wanyama & Company, Advocates for the protestor.

