



REPUBLIC OF KENYA



**In re Estate of Charles David Etyang Ichani (Deceased) (Succession Cause
1 of 2014) [2023] KEHC 24174 (KLR) (27 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24174 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 1 OF 2014
WM MUSYOKA, J
OCTOBER 27, 2023**

RULING

1. The deceased herein died on 21st August 2010. Representation to the estate was sought by Richard Rich Ichani, in his capacity as son of the deceased. He listed the survivors of the deceased, as 2 widows, 5 sons and 2 daughters, being Sabencia Asikuku Ichani, Redempta Amuya, Richard Rich Ichani, Dominic George Ichani, Francis Xavier Ichani, Jude Thaddeus Omong'o, Tacisio Aswa Ichani, Roselyne Amusugut and Godelia Tata. South Teso/Apokor/28, 1210, 1458 and 2261 were listed as the property that the deceased died possessed of. It was stated that he had no liabilities. Letters of administration intestate were made to Richard Rich Ichani on 12th May 2014, and a grant was duly issued, of even date.
2. A summons for revocation of grant was filed herein, curiously, on 12th January 2013, dated 22nd December 2014, by Redempta Imujaro Amuya, a widow of the deceased, dated 20th December 2014, who complained that, although her name appeared in the petition, she was not consulted. She stated that she preferred that the estate be administered by the widows, disclosing that she did not have any children with the deceased. That application was resolved by consent on 20th April 2015, when Redempta Imujaro Amuya was added to the administration as a co-administratrix.
3. The 2 administrators did not file a formal application for confirmation of their grant, but several affidavits were placed on record, dealing with distribution of the estate. Those affidavits were the basis for oral hearings that were conducted by Kiarie J in 2019, culminating in a ruling delivered on 11th March 2020, where the court directed valuation of the assets of the estate, after which the parties were to file a proposed distribution, within 6 months, failing which their grant was to be automatically revoked. The valuations were done, but it appears that the parties dilly-dallied, and the 6 months expired, and their grant was revoked by orders made on 15th February 2022. It was directed that a fresh grant be made to the previous administrators, who were to take out a summons for confirmation of grant within 4 months, for distribution of the estate. A grant of letters of administration in those terms was issued on 22nd April 2022.



4. The summons for confirmation of grant, filed on 7th June 2022, by Richard Rich Ichani, dated 6th June 2022, rode on the orders of 15th February 2022. I shall refer to Richard Rich Ichani as the applicant. In it, he identifies the survivors of the deceased as falling in 2 houses, of Sabencia Asukuku Ichani and Redempta Imujaro Ichani. The 1st house is said to comprise of Richard Rich Ichani, Dominic George Ichani, Francis Xavier Ichani, Jude Thaddeus Omong'o, Tacisio Aswa Ichani, Roselyne Amusugut and Godelia Tata; while the 2nd house comprises of Redempta Imujaro Ichani. He groups the assets of the estate into 5: land with title deeds, land without title deeds, commercial plots without title deeds, money held by the Public Trustee, and rent collected from Amukura buildings. The assets with title deeds are identified as South Teso/Apokor/28, 351, 1210, 1458 and 2261, and Bukhayo/Kisoko/7712 and 7713. The assets without title documents are said to be South Teso/Apokor/1, 351, 448, 650, 813, 816 and 1437, and Bukhayo/Kisoko/7713. He proposes distribution as follows: South Teso/Apokor/28 to Sabencia Asukuku Ichani and Tacisio Aswa Ichani; South Teso/Apokor/ 351 to Richard Rich Ichani; South Teso/Apokor/448 to Dominic George Ichani; South Teso/Apokor/680 to Dominic George Ichani, Tacisio Aswa Ichani and Redempta Imujaro Amuya; South Teso/Apokor/813 to Richard Rich Ichani; South Teso/Apokor/816 to Tacisio Aswa Ichani; South Teso/Apokor/1210 to Redempta Imujaro Amuya, Dominic George Ichani and Jude Thaddeus Ichani; South Teso/Apokor/1457 to Francis Xavier Ichani; South Teso/Apokor/1458 to Francis Xavier Ichani; South Teso/Apokor/2261 to Roselyne Amusugut Ichani and Godelia Tata Ichani; South Teso/Apokor/ without a number to Jude Thaddeus Ichani; South Teso/Apokor/ developed plot without a number at Simba Chai to Jude Thaddeus Ichani; South Teso/Apokor/ undeveloped plot without a number to Richard Rich Ichani; Bukhayo/Kisoko/7713 to Sabencia Asukuku Ichani, Redempta Imujaro Amuya, Francis Xavier Ichani, Roseline Amusugut Ichani, Godelia Tata Ichani, Richard Ichani, Dominic George Ichani and Jude Thaddeus Ichani. It is proposed that the money held by the Public Trustee be utilized to meet estate expenses. Regarding the rent from Amukura, it is proposed that Redempta Imujaro Ichani account for it, collected from the date of the death of the deceased to date, save for the 2 rooms that she currently occupies.
5. Redempta Imujaro Amuya has filed an affidavit of protest, sworn on 25th November 2022, and I shall refer to her hereafter as the protestor. She agrees with her co-administrator on the list of the survivors of the deceased. She identifies the assets registered in the name of the deceased as South Teso/Apokor/28, 351, 1210, 1458 and 2261. She identifies assets without title documents as South Teso/Apokor/2868 and 2869. She states that South Teso/Apokor/680 is registered in the name of Orichina Okwama Oputo, South Teso/Apokor/1457 is registered in the name of Zakayo Juma Imodoi, South Teso/Apokor/7712 is registered in the name of Kosima Omukaga Okello, and South Teso/Apokor/7713 is registered in the name of Amuya Quintine. She states that the 3 plots at Simba Chai stand on unknown parcels of land. She identifies the money with the Public Trustee, trees and money at an account at National Bank of Kenya as the other assets of the estate. She proposes distribution as follows: South Teso/Apokor/1210 to Redempta Imujaro Amuya, Dominic George Ichani and Jude Thaddeus Ichani; South Teso/Apokor/2261 to Roseline Ichani, Godelia Tata Ichani and Redempta Amuya; South Teso/Apokor/28 to Sabencia Ichani and Tacisio Ichani; South Teso/Apokor/351 to Richard Rich Ichani; South Teso/Apokor/1458 to Francis Xavier Ichani; South Teso/Apokor/1457 to Francis Xavier Ichani, Redempta Amuya and Tacisio Ichani; South Teso/Apokor/2868 and 2869 to Sabencia Ichani and Redempta Amuya; the plots at Simba Chai to Sabencia Ichani, Roseline Ichani and Dominic George Ichani; South Teso/Apokor/680 to Redempta Amuya, the money with the Public Trustee to Sabencia Ichani and Redempta Amuya, and the money in the bank account to be shared equally between all the survivors of the deceased.
6. The parties opted to dispose of the application by way of written submissions. Both sides have filed written submissions, which I have read through, and noted the arguments made.



7. The parties have indicated that some assets are registered in the name of the deceased. Some are said to belong to the deceased, but are still registered in the names of other individuals. Some assets are said to belong to the deceased, but the particulars of the parcels of land on which they sit are unknown. The court only distributes assets that are demonstrated to indisputably belong to the deceased, in terms of being registered in his name. Any asset that he had acquired from another person, but died before it was transferred to his name, is not yet an asset in the estate, and it is not available for distribution. It is the duty of the administrators to ensure that such assets are brought into the estate, before distribution is proposed. It is called perfecting assets. The duty to collect, get in and gather assets include causing such assets to be transferred to the estate. If they are not brought into the estate, through registration in the name of the deceased, or in the names of the administrators, then such assets do not form part of the estate, and cannot be distributed. The same applies to assets whose registration details are unknown. They do not belong to the estate, until they get registered in the name of the deceased or the names of the administrators, or until their registration particulars are established. They would not be available for distribution before that is done. It is the duty of the administrators to trace the details of such assets, before they propose them for distribution. Tracing may require engaging or hiring surveyors to assist them in that endeavour. The court does not distribute assets blindly. It will only distribute what is in the name of the deceased, or what has been transferred to the estate. It is not the duty of beneficiaries to trace assets whose details are unknown, after such assets are allocated to them at confirmation. Neither is it the duty of beneficiaries to perfect imperfect titles, after the same are allocated to them at confirmation. That ought to be the business of the administrators, to be carried out prior to confirmation. No asset, whose particulars of ownership are unknown, or whose title is imperfect, should be allocated to a beneficiary at confirmation. The fact that these assets are yet to be transferred to the name of the deceased or to the estate, would mean that the administrators have failed in their duty to get in, gather and collect the estate. No one is going to come from somewhere, neither from heaven nor from anywhere else, to discharge these duties on their behalf. If the administrators are unable, or incapable, or lack the competence to discharge these duties, then they should be prepared to give way to others, to take over from them.
8. Perhaps I should add, that after confirmation of grant, the certificate, generated from the confirmation orders, is presented to the land registrar, as required by the provisions of the *Land Registration Act*, No. 3 of 2012, and *Land Act*, No.6 of 2012, on transmission, for transmission of the title from the dead proprietor to the beneficiaries listed in the certificate of confirmation of grant. The transmission process can only be of property moving from the dead registered proprietor to his survivors. Where a dead person had bought the property, in terms of paying for it and executing a sale agreement, but the records at the lands registry were never changed, to have it transferred from the name of the seller and registered in his name, the transmission process, upon his death, cannot happen, as, technically and legally, the title would not be in his name, and the property would not be his, and a confirmation process, which purports to devolve such property to his survivors, would not help. The land registrar can only transmit the title from the name of the registered proprietor, and not otherwise. A certificate of confirmation of grant, purporting to devolve property which is not registered in the name of the deceased, will not be honoured by the land registrar, and the beneficiaries would be referred back to the court, for such a certificate would be asking the land registrar to do that which is not legal. That should underscore the need for administrators to perfect titles of properties that the deceased person had acquired, but died before they were transferred to his name. Acquisition of registered land is not complete, until the property is transferred to and registered in the name of the buyer. The exchange of the purchase price money, execution of the sale agreement and taking of possession, is not enough, for it only constitutes the buyer a beneficial owner, that is a person who has acquired a beneficial interest in the property, but who has no legal title to it. He only becomes a legal owner upon transfer and



registration as proprietor. The land registrar only recognizes, at transmission, the legal owner, not the beneficial owner. It is the duty of the administrators to move the property from beneficial ownership by the deceased to legal ownership by his estate, by causing it to be transferred and registered, either in the name of the deceased or the estate. That exercise should be undertaken by the administrators before confirmation of the grant and distribution of the estate is sought, for what is confirmed and distributed are the assets that the deceased legally owned, not those that he had beneficial interest in, that is to say assets whose legal ownership is perfect.

9. Some administrators assume that administration is just about obtaining a grant, and applying for its confirmation 6 months thereafter. It is not as simple as that. It is a lot more involving, particularly where the deceased left some incomplete business. It is about identifying the assets of the estate, and bringing all of them into the estate, where that is possible. Where some of the assets are imperfect, in the manner discussed above, the administrators will have to comply with the *Land Control Act*, Cap 302, Laws of Kenya, for assets that are subject to that law, seek the relevant consents, to have the assets transferred from the buyer to the deceased or the estate. It may involve consent to subdivide the property first, if the deceased had only bought a portion of it. It will require the administrators to involve the sellers of the land in the process, and where the sellers are dead, the administrators of their estates. If they become recalcitrant, there may be need for litigation, at the court with jurisdiction, for the estate to prove its claim, and get specific performance.
10. A number of title documents have been placed on record, by way of certificates of official searches. Those for South Teso/Apokor/28 and 1210 indicate that the 2 assets are registered in the name of Charles George Etyang, since 8th February 1977 and 28th January 1978, respectively; South Teso/Apokor/680 is indicated as registered in the name Orichamu Oputo, since 1st August 1972; and South Teso/Apokor/1458 is registered in the name of Charles David Etyang, since 28th July 1993. Certificates of official searches in respect of Bukhayo/Kisoko/7712 and 7713, indicate that these 2 are registered in the name of Redempta Imujaro Amuya. There are also copies of green cards for Bukhayo/Kisoko/794, which indicate that it was registered in the name of Emurada Ekodoi, on 21st May 1971; Bukhayo/Kisoko/2985 was registered on 5th January 1991, in the name of Peter Okodoi Maradi, before the register was closed on 5th January 1994, upon subdivision into Bukhayo/Kisoko/3251 and 3252; Bukhayo/Kisoko/7712, which shows that it was in the name of Peter Okodoi Maradi, as at 25th October 2012, before it was transferred to the name of Redempta Imujaro Amuya, on 3rd September 2013; and Bukhayo/Kisoko/7713, which shows that it was in the name of Peter Okodoi Maradi, as at 25th October 2012, before it was transferred to the name of Redempta Imujaro Amoya, on 25th February 2013. There are sale agreements too, for a plot whose details are not disclosed, dated 12th July 1986, between the deceased and George Ekhokolo; of a South Teso/Apokor piece of land whose details are not given, dated 23rd November 2004, between the deceased and Clarence Juma Joshua; and Bukhayo/Kisoko/794, dated 24th July 2009, showing that the deceased bought it from Opili Sunday Francis. I have also seen the 4 valuation reports on record. That for South Teso/Apokor/3652 shows it to be registered in the name of Richard Rich Ichani; that for South Teso/Apokor/3692 shows it to be registered in the name of Redempta Muyaro Amoya; that for South Teso/Apokor/4476 shows it to be registered in the name of Longino Omanyala Omunyin; and that for Bukhayo/Kisoko/7713 shows it to be registered in the name of Amoya Quintine.
11. My review of the documents of title that the parties have filed herein reveal that only 1 asset is registered in the name of the deceased herein, Charles David Etyang Ichani, and that is South Teso/Apokor/1458. The title documents for the rest of the assets indicate that they are registered in the favour of other individuals. It would mean that only South Teso/Apokor/1458 is available for distribution. South Teso/Apokor/28 and 1210 are registered in the name of Charles George Etyang. I have not been told



whether Charles George Etyang is the same person as Charles David Etyang Ichani. Some assets are in the name of Redempta Imujaro Amoya, and the circumstances under which they came to be under her name, have not been addressed. If the said assets were originally in the name of the deceased, then Redempta Imujaro Amoya should explain how she got them registered in her name, and, if the explanation is not satisfactory, the same ought to be restored to the estate. There is no evidence that the Public Trustee is holding any money for the estate, nor that the deceased operated a bank account with the National Bank of Kenya. There should be documented confirmation from the Public Trustee, that he is holding such monies; and documentation from the bank, evidencing existence or maintenance of the alleged bank account.

12. From the material before me, I am not satisfied that the administrators herein have done a good job of getting in, collecting and gathering the estate. Only 1 asset is shown to be within the estate, the rest are not yet part of the estate, to the extent that the administrators have not filed title documents herein demonstrating that the said assets in fact exist, and are, indeed, in the name of the deceased. It would be premature to confirm the grant herein, in the circumstances. The administrators will have to complete the exercise of collecting the assets, and getting them within the estate, before distribution can be attempted. 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.
13. I will postpone the disposal of the application, dated 6th 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. Should they fail, I shall declare a failure of the administration, and revoke their grant, in my own motion, under section 76(d)(ii) of the [Law of Succession Act](#), and handover the administration to the Public Trustee, as administrator of last resort, of course, after giving a chance and a hearing to the other children of the deceased. The matter shall be mentioned after 3 months, for compliance, and to monitor the progress, if any. The Deputy Registrar shall avail a copy of this ruling to the Public Trustee, as a precursor to the possible eventuality of a revocation of the grant herein, which could potentially lead to the appointment of the Public Trustee, as administrator. It is so ordered.
14. I regret that the language employed in this ruling is rather robust. It is because the administrators have not learnt from the earlier rulings, of my predecessors, Kiarie J and Karanjah J, which pointed them to the fact that the administration herein was not going in the right direction. The administrators have not taken cue from those rulings. The deceased died in 2010, and these proceedings commenced in 2014. It is taking too long to complete this administration. I am persuaded that the administrators do not appreciate or understand what it entails to be administrators. I have given them a third chance, for a second chance had been given to them by Karanjah J, to redeem themselves, and I hope they will take it.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 27TH DAY OF OCTOBER, 2023.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

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

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

