



In re Estate of William Kimenjo Arap Mosonik (Deceased) (Succession Cause 587 of 2009) [2023] KEHC 26546 (KLR) (28 November 2023) (Ruling)

Neutral citation: [2023] KEHC 26546 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 587 OF 2009
SM MOHOCHI, J
NOVEMBER 28, 2023**

IN THE MATTER OF THE ESTATE OF WILLIAM KIMENJO ARAP MOSONIK (DECEASED)

BETWEEN

**SAMSON KIPKOECH MENJO MOSONIK 1ST APPLICANT
JOHN KIBET MOSON MENJO 2ND APPLICANT
LOISE CHELANGAT MOSONIK 3RD APPLICANT
GERALD MOSONIK MENJO 4TH APPLICANT
JANET CHEPKIRUI MOSONIK 5TH APPLICANT**

AND

**LINNER CHEROTICH BIEGON 1ST RESPONDENT
AGNES CHEPKEMOI MOSONIK 2ND RESPONDENT**

AND

EMMS INVESTMENT LTD INTERESTED PARTY

RULING

1. Before me are two applications the 1st one is a summons dated 30th September 2021, by Emms Investment Ltd - the Interested Party, (hereinafter the referred to as the 1st Application), against all administrators seeking they be compelled to execute transmission forms within 7 days failure of which the Deputy Registrar to execute the transmission forms in place of the Administrators, and 2nd Application is a Summons dated 28th February 2023, seeking they be compelled to sign the surveyors proposed subdivision and all the transmission documents required to bring into effect the issuance of titles and transfer of properties as per the certificate of confirmation of grant dated 30th August 2012 as further amended and Rectified on 23rd March 2017.



2. That in default, the Court through the Deputy Registrar executes all documents necessary for subdivision and transfer of properties assets in the names of beneficiaries on behalf of the administrators who have declined to do so

Applicant's Submissions

3. The 2nd Application is Notice of Motion Application dated 28th February 2023 was filed and sought the following orders;
 - i. That Linner Cherotich Biegon and Agnes Chepkemai Mosonik be compelled to sign the surveyors proposed subdivision report and all transmission documents required to bring into effect the issuance of titles and transfer of properties and assets to the beneficiaries as per certificate of confirmation of Grant dated 30th August 2012, further amended and rectified on the 23rd March 2017.
 - ii. That in default this Honourable Court through the Deputy Registrar executes all the documents necessary for subdivision and the transfer of the properties/assets in the names of beneficiaries on behalf of the Administrators who have declined to do so;
 - iii. That upon execution by the Deputy Registrar of this Honourable Court in order (2) above the same be deemed as sufficient instrument for completion/transfer documents
 - iv. That this Honourable Court be pleased to give orders as to the compliance of the certificate of Confirmation of Grant Dated 30th day of August 2012, further amended and rectified on the 23rd day of March 2017.
4. That, the Notice of Motion Application dated 28th February 2023, was intended to ensure all the beneficiaries enjoys the fruits of the judgment of this Honourable Court and the subsequent confirmation of Grant dated 30th August 2012, further amended and rectified on the 23rd March 2017.
5. That upon issuance of the Certificate of confirmation of Grant on 30th August 2012, the Administrators through a jointly signed letter dated 13th February 2013, signed by all the administrators, instructed firm of Toplands Engineering surveys which was later on incorporated as Toplands Geospatial limited to sub-divide the property as per the Grant through the law firm of Kiplenge & Kurgat Advocates. At the time of the instruction one Evans Ngeywo Maghas was assigned this task by the firm and at that time he was working as an approved assistant under one Wilson N. Kamau as per requirements under Sec 33 of the [survey Regulations](#), 1994, Regulations under Sec 45 of the [Survey Act](#) Cap 299.
6. Acting on the request of all the beneficiaries, coupled up with the fact that the planting season was approaching, the surveyor did place beacons in consultation with the family as per their area of preference. All the members there after took possession of their portions and a Beacon certificate was duly signed by the family representative on the ground Mr Gerald Mosonik.
7. That up to date, all the beneficiaries are in possession of their portions with Clear boundaries which they have occupied and have been carrying out farming activities without any interference since 2013.
8. That on or about 2017, the surveyor after carrying out research on the ground and the survey offices, noted that some portion of the land measuring on about 47 acres left out of the confirmed Grant. He proceeded and advised the family of the need to have the confirmed Grant rectified. This led to the rectification of the Grant leading to the rectified Grant dated 23rd March 2017.



9. The Grant having been rectified, the surveyor proceeded with drafting of plans to be presented to the county government for approval and this stage elicited so many back and forth from the beneficiaries and administrators with several unending meetings and communication that culminated to the most crucial meeting of on 22nd November 2021 in which part of the resolution was that a sketch map be drawn by the parties present including the 1st and 4th Administrators herein, in regards to LR No 6885 Nakuru each appended their signature for adoption by the surveyor in his final plans.
10. That in consideration of the sketch and in line with the desires expressed by all the beneficiaries, the surveyor proceeded to draft a proposal plan for signing by the administrators and onward submission to the county government for registration. The same was drawn in accordance with the sketch map submitted only for the 1st and 4th Administrators stated castigating the surveyor and throwing aspersions as to his suitability and Professional qualification to handle the matter and yet all along for over 8 years this had never been raised. As a result of the above meeting, which was not attended by the applicants/administrators.
11. That a letter dated 7th September 2022, was issued by the estate advocate, purporting to terminate the services of the surveyor. It is important to note that the aforementioned termination letter, was signed by the advocate without any instructions, minutes and or resolution by all the administrators like they had done during the issuance of instruction for engagements where all the administrators appended their name and signature to the letter dated 13th February 2013 instructing Toplands Engineering Survey
12. Subsequently, after the services of the surveyor (Toplands Geospatial ltd) were purportedly terminate, part of the administrators sought a quotation to carry out a fresh survey of property on LR No 6885 NAKURU coincidentally, from the same independent surveyor, Mr Atai, who issued a quotation of Kshs 17, 225,000/= under the name Ortki Geosystems Limited.
13. That this clearly, bespeaks of the intent of the opinion issued and the advice of a new survey thereof, knowing very well that the alleged errors and or discrepancies were not only rectifiable, but did not warrant the estate to plunge itself into a whole expensive exercise of undertaking a new survey, exhibiting clear bias on his part.
14. The Applicants Submit that, surveyors like any other profession, are governed by regulatory bodies which ensures that unscrupulous and unqualified persons do not practice. Section 36 of the [survey Act](#) Cap 299 clearly forbids any persons not qualified from carrying out any survey. In that regard, the Licence Surveyors Board is mandated with the role of registration.
15. That it is during this time, a few of the beneficiaries and administrators sought the opinion of one Mr Atai Kingoina Oren an independent surveyor to work with the surveyor at the exclusion of the Applicants herein and come up with a joint survey which led to the meeting at the Chiefs office on the 13th July 2022. It is at this meeting that one Mr Atai Kingoina Oren in the absence of the surveyor pointed out some discrepancies in the survey carried out by Mr Maghas monitoring the activities of surveyors and for one to practice as (such, must and gazetted in the Kenya gazette.
16. That it is therefore inappropriate and totally uncalled for the 1st and 4th Administrators to cast aspersions on the professional qualifications and character of the surveyor (Mr. Evas Maghas) which is pure character assassination, without making enquiries with the relevant bodies. Mr. Maghas is a qualified survivor duly registered by Licence Surveyors Board with registration No252, <https://www.Isb.or.ke/list-of-licensed-surveyors-2021/>, <https://www.Isb.or.ke/wp-content/uploads/2020/12/List-of-licensed-surveyors-November-2020.pdf> together with an annual



practicing certificate and duly gazetted in the Kenya Gazette under Gazette Notice Vol no 9500 Survey Board list of registered surveyors in Kenya 2022 and previous years.

17. That, a closer look at the same data the name of the independent Surveyor Mr Atai Kingoina Oren whom the 1st and 4th Administrators admits to have engaged as observed in their affidavits, as an independent surveyor, does not appear under the Licence surveyors Board and or the Kenya Gazette. This calls into question the very findings that were relied on in disparaging the findings of Mr Evans Maghas, having been obtained from unregistered and ungazetted independent surveyor.
18. When the surveyor (Mr Maghas) submitted the draft plans for execution, the 1st and 4th Administrators thus refused to sign the survey report with claims of incompetency, lack of professional qualifications, and termination of services thus necessitating the instance application herein.
19. While these events were going on, one of the beneficiaries as per the Grant, Emm's Investment Limited, who is not a member of the family had filed the 1st application Dated 30th September 2021, in this Honourable Court against the administrators of the estate, demanding issuance of title in its name to facilitate developments on its 20 acres piece of land which they are already been in possession but they cannot carry out any meaningful developments since they cannot get any approvals from the relevant county and national government bodies while the title remains in the name of the deceased.
20. That, from the foregoing, the following issues are identified for consideration;
 1. That the administrators issued instructions to the surveyor to carry out subdivision in line with the confirmed and rectified Grant.
 2. That each of the beneficiary is in occupation and use of their portion including EMM'S Investment limited.
 3. That all parties signed a sketch map on the 20th November 2021 and the question should then be, whether the draft plan presented by the surveyor was in tandem with the desires of the beneficiaries as espoused in the draft sketch?
21. That, the Applicants herein have signed the copy of the draft survey report to facilitate issuance of title documents to all beneficiaries who should not continue suffering at the expense of personal desires of a few and are in support of the application made by EMM'S Investment Limited towards this end and in their desire to fulfil their legal obligation.
22. That, the variances of 0.8ha, 0.27 acres, 0.28 acres, 0.08 acres, 0.37 acres, 1.29 acres, 0.22 acres, 0.69 acres and 0.16 acres alluded to in the joint report are not so fundamental to render the entire survey exercise a nugatory and can easily be rectified by the surveyor without having a totally new and fresh survey being done.
23. That, the actions of the 1st and 4th Administrators are bent towards denying the beneficiaries their right to maximize the use of their share including developing the same for without the title documents in their name, they can neither sale, and or develop the pieces of land.
24. That, one of the beneficiaries/Applicants herein Gerald Mosonik Menjo is sick (spinal injury) and requires urgent medical assistance. The inability of him to fully utilize the properties allocated to him including disposal of some has incapacitated his life and support for family and children forcing him to beg and shamefully being summoned by chief for not sending the children to school.
25. That any attempts to appoint another surveyor will be an unnecessary financial burden to the estate especially, when all the liquid cash has been shared among the beneficiaries and no further source



- of income generating activity coming from the estate keeping in mind that the properties have been occupied and in use by the beneficiaries.
26. That in the event that one is dissatisfied with the report of the surveyor, the law clearly provides for a remedy for correction of errors as per Sec 31(1) & (2) of the Survey Act Cap 299.
27. The Applicants rely on, and are in total agreement with the sentiments in re Estate of Mbaabu M'Abutu (Deceased) [2020] eKLR, the honourable judge observed and stated:
- “I have lamented time without number that Court administrators should not be turned into administrators of estates of deceased persons. It is awful that a duly appointed administrator of the estate of the deceased should refuse to sign transmission documents as required in law. Needless, to state that such conduct runs counter to the overall statutory duty of the administrators; to administer the estate of the deceased diligently and without undue delay. Therefore, where an administrator wilfully fails or refuses to diligently carry out his statutory duties, the Grant made to him should be revoked rather than authorize the DR or Court administrator to sign transmission papers, yet, leaving the indolent administrator in situ. I propose Courts to take this path in order to relieve estates of deceased persons of belligerent administrators, thereby, enhancing efficiency in administration of those estates by appointing compliant administrators. Nonetheless, notice of such precipitate action should be given to the administrator whose Grant is subject of revocation. See section 76 of the Law of Succession Act. For emphasis, it makes real legal sense to revoke the Grant made to recalcitrant administrators, rather than turn Court administrators into administrators of sort of the estate of the deceased, yet, leaving such administrator in the office of personal representative of the deceased. ”
28. That, the consequences of an administrator's failure to sign completion documents were well elaborated in estate keeping in mind that the properties have been occupied and in use by the beneficiaries, this Court is empowered to give the necessary orders for the execution of the survey plan and transfer documents as sought in the Notice of Motion Application dated 28th February 2023.
29. That in re Estate of Simon Kiprof Cheruiyot (Deceased) [2021] eKLR, the Court held; Guided by the Court 's holding in the above cited authorities, I will proceed to allow the application and order as follows;
1. The Deputy Registrar of this Honourable Court is hereby directed to execute the completion/ transfer documents on behalf of the Petitioners who have since declined to honour the Certificate of Confirmation of Grant issued on 23/7/2013.
 2. Upon execution by the Deputy Registrar of this Honourable Court of the completion documents, the same be deemed as sufficient instrument for Completion/transfer documents.
 3. The administrators are directed to render full and final accounts in respect of the estate in compliance with Sections 83 (f) and (g) of the Law of Succession Act and the same to be filed in Court within 60 days from the date of issuance of titles deeds as per the confirmed Grant.
 4. This being a succession cause and which involves family members, each of the parties shall bear their own costs.
30. The Applicants submit that, the orders sought in the Notice of Motion application dated 28th February 2023 will finally put an end to this long-standing matter and will serve the interests of justice. It is our humble submission that the Application solely lays on the discretion of the Court in directing the



registrar to sign the transfer documents aided by the ample powers donated to it by Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules to resort to, in order to meet the ends of justice.

31. The 1st and 4th Administrators continually deny the Applicants and other beneficiaries their right to unconditionally use their properties and frustrate efforts of transferring the properties distributed to them by the applicants as per the Confirmation of Grant dated 30th August 2012 and further amended on 23rd March 2017.
32. That it has been 11 years since this matter was settled by the Court when it issued the Certificate of Confirmation, thus passing over the mandate of implementation to the administrators, a task which they were to accomplish legally with six (6) months. The application taking cognizance of this inordinately delay and while regrettable, have moved this Court, the message that this honourable Court must resoundingly relay to the Respondents is that litigation must at some point come to an end and parties cannot be allowed to litigate forever.
33. The Applicants submit that this honourable Court Grants the prayers sought in the Notice of motion dated 28th February 2023.

The 1st and 4th Administrators Case

34. The 4th Administrator has formulated the issue, Whether the Applicants are entitled to the prayers sought in the Notice of Motion Application dated 28th February 2023 urging that, the applicants moved this Court by way of a motion pursuant to order 51 of the Civil Procedure Rules 2010 despite rule 49 of the Probate and Administration Rules under the Law of Succession Act cap 160 which provides that the Court shall be moved by way of summons. This is further buttressed and complimented by Rule 59(1) of the Probate and Administration Rules which provides the form of proceedings to be filed or lodged before this Honourable Court.
35. The 4th Administrator posits that, ironically, the 2nd Applicant affirmed this position in his supporting affidavit dated 28th February 2023 at paragraph 23.
36. The 4th Administrator contends that, the crux of the Applicants application is failure by the Respondents to append their signatures on the proposed subdivision plan and the apparent breakdown of trust between one set of administrators in the 1st and the 4th Administrator. The 4th Administrator on her part averred in her Replying Affidavit several instances where Mr. Evans Maghas, the surveyor that had been retained by the administrators sometime in 2013, failed to provide proper guidance and exude professionalism in the course of his duties.
37. The 4th Administrator's issues with the said surveyor further extend to and impugn on his competence and professional qualifications as deponed in her Replying Affidavit dated 21st March 2023 and referenced in Exhibit 2, Exhibit 3 and Exhibit 4, allegations of which in our view remain uncontroverted considering the fact that the applicants never found it prudent to file a supplementary affidavit deponed by Mr. Evans Maghas and despite the applicants seeing it fit to retain him inspite of the objections and misgivings harboured by the Respondents jointly as well as other beneficiaries not enjoined in this application.
38. The 4th Administrator submit on behalf of the Respondents that, for this Court to grant the Applicants the prayers sought in the Notice of Motion application dated 28th February 2023, it needs to ascertain that the reasons advanced by the Respondents for their refusal to execute the proposal for subdivision lacks merit and are not valid.



39. That, the Applicants have submitted through their learned Counsel that, the survey report on L.R Number 6885 Nakuru by Mr. Atai Kingoina Oren who had been recommended by the area Chief in his futile efforts in attempting to resolve the stalemate between the Applicants and the Respondents, revealed a variance of 0.8 acres, 0.27 acres, 0.28 acres, 0.08 acres, 0.37 acres, 1.29 acres, 0.22 acres, 0.69 acres and 0.16 acres are not so fundamental to render the entire survey exercise nugatory and can easily be rectified by the surveyor without having a fresh exercise undertaken.
40. That, the above variances in total acreage amount to 4.16 acres. If the total acreage of access roads on LR Number 6885 Nakuru which forms part of the discontent harboured by the Respondents towards Mr. Evans Maghas constituting another 15.37 acres is considered, the variance comes to an aggregate 19.53 acres.
41. That conservative estimate of the value of an acre at L.R Number 6885 Nakuru is roughly Kshs. 8,000,000,00 to Kshs, 10,000,000.00. The upshot is that these variances cannot be trivialized or taken casually as the Applicants have suggested.
42. Reliance is placed on Justice Gikonyo in his ruling in *In Re Estate of Naftari Muga (Deceased)* (2020) eKLR_ opined,
- “ 15] This matter was initiated in 2008 and judgment delivered on 16/10/2014. Since that time, beneficiaries of the estate have not been able to enjoy their fruits because the petitioner thinks the land should be divided in a particular manner so as to guarantee him taking a specified portion. Needless to state that subdivision of land is governed by law and land surveyors are amongst the relevant professionals whose determinations, unless the contrary is shown, are authoritative and dependable. I do not think that the process of subdivision of estate property depends on the desires of an individual. In the circumstances of this case, it has become imperative to state that, parties should understand that by building on the estate during the pendency of succession proceedings is not only a violation of the law but assured way to earn you the wrath of the law; not a reward. Such would be self-inflicted damage. This seems to be the case here.
- (6) Turning to the main; the report by the District surveyor has not been shown to be contrary to the law or the grant herein. It is credible, professional and appropriate in the distribution of the estate herein.”
43. That as for the argument advanced by the Applicants that, the variances can be cured at a later stage in the words of Mr. Evans Maghas, ... during or after the approval of the subdivision by the County Government...” at paragraph 7 of his letter addressed to the Administrators of the Estate dated 30th January 2023 entailed in the 4th Administrator’s Replying Affidavit and marked as Exhibit 5B, she submits that part of the duties and obligations placed upon the administrators is to ensure that the estate is fully distributed in a manner consistent with the law and ultimately renders this Honourable Court functus officio in so far as administration is concerned.
44. That part of those duties includes, ensuring the efficient distribution of the estate by qualified personnel. The 4th Administrator submit on behalf of the Respondents that, the agitation by the Applicants and Mr. Evans Maghas to have the Respondents execute the proposal for subdivision in its current form and the orders prayed for in the Notice of Motion Application dated 28th February 2023 are not only disingenuous but also riddled with mischief and in bad faith considering that the said orders would further extend to execution of all transmission documents required to bring into



effect the issuance of titles and transfer of properties with no rider or safeguard guaranteeing that the significant variances would be corrected.

45. The 4th Administrator submit on behalf of the Respondents that, the Notice of Motion Application dated 28th February 2023 only deals with the subdivision proposal for L.R Number 6885 yet other parcels in the estate are yet to be subdivided and distributed in line with the rectified certificate of confirmation of grant dated 23rd March 2017.
46. That this unfortunate state of affairs is not abated by the fact that there still remains a lot of doubt as to what exactly constitutes the actual total acreage of L.R Number 6885 and whether the total acreage indicated in the said grant tallies with the actual acreage on the ground. The discovery of 47 acres previously unknown to the Applicants and the Respondents that precipitated the rectification of the certificate of confirmation of grant is a glaring example why there is need for an independent and neutral surveyor to undertake subdivision of all the parcels in the estate and not just L.R Number 6885.
47. The 4th Administrator on behalf of the Respondents, further aver that with regard to the argument that the Respondents have recourse in law pursuant to Section 31 (1) and (2) of the *Survey Act* cap 299 if dissatisfied with the report of the surveyor, this section must be read or interpreted together with Section 21 (1) and (2) which provides that a licensed surveyor shall be responsible for the correctness and completeness of every survey carried out by him or under his supervision and that neither the Government nor any Public Officer shall be liable for any defective survey or any work appertaining thereto performed by a licensed surveyor.
48. The 4th Administrator submit on behalf of the Respondents that, efficient administration of the estate entails, ensuring that all errors and/or variances are corrected from the onset and no shortcuts are resorted to in the name of convenience and or necessity to be rectified at a later stage. The *Survey Act* is inapplicable at this stage.
49. That the Applicants have further quoted in their submissions the financial costs that a fresh exercise would entail indicating the same to be Kshs. 17,225,000.00 thereby supporting their contention that the Respondents should proceed to execute the subdivision proposal to save the Estate from unnecessary costs/expenses. The 4th Administrator submit on behalf of the Respondents that, there is no evidence reduced in the affidavits sworn by the Applicants or the Respondents pertaining to the said quotation from Mr. Atai Kingoina Oren and the same should be disregarded.
50. That, the Applicants and the Respondents agree that all beneficiaries have settled on L.R Number 6885 in line with the certificate of confirmation of grant dated 30th August 2012 and rectified on 23rd March 2017. They are also in agreement that subdivision is a necessary step to ensure all beneficiaries acquire titles to their properties. The only point of divergence remains the surveyor to undertake the subdivision process.
51. The 4th Administrator cites the case of *Stephen Murithi M'magiri -vs- William Mwiti Magiri & Another* (2021) eKLR, where Justice Murithi faced a similar scenario and held that,

“ 13. What then is preventing the said parties from going ahead with the subdivision in the manner they both seem to be advocating for which will ensure that what is on the ground is not affected by the said exercise? It appears to be an issue of mistrust amongst family members. Going by the averments made by the Respondents, it appears that there have been attempts to undertake such subdivision but these attempts have been frustrated owing to the Applicant's apparent fears. This Court observes that whilst there are 10 beneficiaries in total, only one of them, the Applicant, is apprehensive that there will be



injustice in the subdivision. Although, this Court finds that the basis of this apprehension has not been substantiated, this Court is alive to the sensitivity of succession matters, more so where land is involved. The Respondents have indicated that they are not opposed to the Court allowing the Applicant to contract with his own surveyor. In fact, it is claimed that the Applicant has previously been directed to get his own surveyor but he failed to do so.

14. Be that as it may, this Court therefore finds that the most efficacious way of resolving this matter is to allow parties to come with their own private surveyors and in addition, that the Applicant is at liberty to engage a government surveyor who will act as a neutral party. Parties who wish to engage their own private parties should be allowed to do so but the survey exercise ought to be done jointly with the government surveyor. This should dissuade any fears of irregularity in the subdivision as during the exercise there shall be both private and a government surveyor. As to the manner of subdivision, this should be done in such a manner as to preserve the beneficiaries' properties and developments on the portions they have been occupying. Concerning the prayer for police assistance, this Court does not see any reason to grant the same."
52. That, failure by the Applicants and the Respondents to agree on the best course of action with regards to the subdivision due to reasons given by 1st and 4th Administrators in their Replying Affidavits dated 21st March 2023 and 26th June 2023 respectively, the Applicants moved this Court prematurely instead of addressing the issues raised with Mr. Evans Maghas's subdivision proposal.
53. 4th Administrator wonders, why the Applicants would on one hand accuse the Respondents of failure to fulfil their duties and obligations pursuant to Section 83 (g) and (f) of the Law of Succession Act cap 160?, yet on the other hand move the Court to compel the Respondents to execute all documents necessary for subdivision specifically for L.R Number 6885 and not for all parcels yet to be subdivided and distributed in the estate? as shown in the status report dated 21st December 2022 by the 2nd Administrator addressed to all the administrators marked as Exhibit 7A in the Replying Affidavit dated 21st March 2023?
54. 1st and 4th Administrators submit that, in view of the foregoing and in light of the misgivings the Respondents and some beneficiaries have with Mr. Evans Maghas, which even at some point culminated into a majority of them terminating his services as evidenced by the letter dated 7th September 2022 and marked as "LCB 1" in the 1st Administrator's Replying Affidavit dated 26th June 2023, it is only prudent that this Honourable Court invokes rule 73 of the Probate and Administration Rules and orders that the parties proceed With their own surveyors or jointly undertake the same with a government surveyor so that subdivision is done expediently considering the significant time that has been wasted since inaction by the administrators since 2017.
55. That, the prayer sought in the application dated 28th February 2023 to order the Deputy Registrar to execute all the documents necessary for subdivision and in this particular case the proposal for subdivision of L.R Number 6885 since other properties in the estate are yet to be subdivided, is



premature. Lady Justice Matheka in her ruling *ln Re Estate of Agnes Mumbi Waweru (Deceased)* (2020) eKLR held,

“While it is relevant to the final transmission of the estate and the conclusion of this matter, the issue of the specific pieces of land or spaces to be occupied by each one of the beneficiaries on the estate was not canvassed before me and i did not make any finding on that it.

Hence the basis for the Summons General and the annexed sketch map are not issuing that I had determined to simply be wished away to the Deputy Registrar’s signature. This Court is not a surveyor, it has no idea how the terrain of that land looks like, neither does it have the justification for the

specific subdivisions as proposed by the administrators except the administrators expressed fear about the respondents denying the others access of the roads of access if the land is subdivided according to the respondents’ proposals.

On the face of it the respondents have a point. The administrators’

subdivision gives each beneficiary 3 pieces of land scattered throughout the parcel of land Mwiyyogo/labuira Block 2mukoe) 50. There are numerous paths/roads of access ways within the subdivision and it is not clear whether they have been provided for, and that is an issue to be agreed on as the number of those paths and roads of access will also eat into each beneficiary’s ultimate share.

To assist the Court to determine this issue I really think that parties need to sit down with their respective surveyors and consider the specific spaces of each of their shares. ”.

56. The 4th Administrator in her submission dated 29th July 2023 in regards to the 1st Application taken the view that the Application is premature, that EMMS investments Limited should wait the conclusion of the Probate.
57. That they EMMS investments Limited, cannot have their title processed to the exclusion of all other parcels because the subdivision is yet to be concluded.
58. The 4th Administrator attempts to dispute the claim and entitlement by EMMS investments Limited to the estate of the deceased attempting to demand proof of payment.
59. The 4th Administrator Prays for the Dismissal of the 1st & 2nd Applications.

Analysis & Determination

60. It should always be recalled that the 1st and the 4th Administrators legally remain as such, and enjoy their position by virtue of a grant made by this Court.
61. With regard to the attempt at Disputing the interested party(es) right 20-Acre piece of land to be excisional from LR 6885, I respectfully find this to be an attempt at reviewing and setting-aside a confirmed Grant outside the parameters permissible in law.
62. This Court finds the same challenge, to be res-judicata, having been dealt with twice from 2012 to 2017 both periods where the Respondents were all along administrators and they had executed requisite consents when moving the Court, the issue of Proof of payment of the consideration by the interested party was never raised until six years later, I find this to be mysterious and not in good faith.
63. It cannot be ignored that the Interested Party is a company incorporated under the *Companies Act* whose sole existence is to conduct or engage in business for profit, and that its need for title cannot be



casually dismissed by the 1st and the 4th Administrators as premature! This company has been without title for over 11 years.

64. On the issue of contesting the quality of Consultancy rendered by the surveyor Mr Maghas, and the discrepancy identified as a basis of refusal to sign the subdivision plan and subsequently all other transmission forms in discharge their duties as administrators equally falls flat on its face.
65. The administrators are expected to demonstrate at all times diligence, responsibility, responsibility and accountability to the Court, whenever any administrator faces challenge he or she, may move the Court in this instance the 1st and the 4th Administrators were not only uncooperative and in total disregard of the obligations in law, but continued to engage in their intransigence for 4 years until the interested party moved the Court and thereafter this year, 6 years since confirmation or the rectified and amended grant and 11 years since the confirmation of grant.
66. An administrator is a trustee who is at all times to exhibit bona-fide and in this instance, the 1st and the 4th Administrators appear unconcerned that the estate of the deceased was supposed to have been distributed by the 24th September 2017 six months after confirmation.
67. The 1st and the 4th Administrators have raised concern on discrepancies arising of the Survey and referred to a joint survey, but no report was provided, the meetings referred to where Mr. Kai actively participated, were post facto judicial pronouncements on distribution, the taking place in a chief's office without acknowledging that the Rectified certificate of confirmation is final orders of the Court, in fact the meetings did not even acknowledge the certificate of confirmation of grant.
68. The Administrator's divergence or contrary positions was never brought to the attention of the Court, until the Interested Party and subsequently the Co-Administrators and beneficiaries moved the Court. I see the 1st and 4th Administrators acting as fence sitters without proactivity on their part towards conclusion of this probate.
69. The Respondent are occupying the Administrator position without demonstrable desire to implement any of their obligatory duties as Court appointed administrators, I respectfully observe that, the Respondent appear to occupy their position for purposes of opposing their co-administrators and no other.
70. The discrepancy and variance identified by the two Respondents cannot be termed to be major affecting their shares, in fact beneficiaries determined for the conclusion of the probate stand to lose marginally higher portions than the Respondents, it is the adage of "mourning more than a bereaved persons" The Respondent appear to disagree without offering leadership expected of administrators, it becomes somebody else problem, I am inclined to disallow the Respondents case on this basis too.
71. Accordingly, the Court partially allows the 1st Application, and disallows the 2nd Application in its entirety on the following terms: -
 - a. The Applicants shall avail to the 1st and 4th Administrators, All requisite forms, for execution in pursuance of the distribution in the further amended and Rectified certificate of confirmation of grant dated 23rd March 2017 to be executed within Thirty (30) days of this Ruling to pave way for the distribution of LR 6885.
 - b. In default to comply with (a) above, the Deputy Registrar of this Court to forthwith execute All the documents on behalf of the 1st and 4th Administrators.



- c. To ensure that order (b) is implementable, the county Land Registrar, Nakuru to process All the title documents for all subdivisions registered as such whether the original title for LR 6885 availed or not.
- d. Any Aggrieved Party has forty-five (45) days stay to Appeal this decision.
- e. The Respondents shall bear the Costs of the Interested party.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS DAY OF 28TH DAY OF NOVEMBER, 2023.

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S. Mohochi

JUDGE

