



In re Estate of the Late M'Rimberia Kibichi (Deceased) (Succession Cause 669 of 2014) [2023] KEHC 27047 (KLR) (20 December 2023) (Ruling)

Neutral citation: [2023] KEHC 27047 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 669 OF 2014
TW CHERERE, J
DECEMBER 20, 2023**

N THE MATTER OF THE ESTATE OF THE LATE M'RIMBERIA KIBICHI (DECEASED

BETWEEN

JOHN MURUGU 1ST ADMINISTRATOR

MARTHA ITEGI M'IKIARA 2ND ADMINISTRATOR

AND

MOSES MBAYA APPLICANT

RULING

1. The summons dated 18th July, 2023 and amended on 27th July, 2023 seeks cancellation of titles.
2. Respondents oppose the application on the ground that the issue is *res judicata* the same having been previously determined.
3. I have considered the summons in the light of affidavits and the proceedings on record. The record demonstrates that in support of the chamber summons dated 24th February 2022 and filed on 01st March, 2022, the 1st Respondent by his supporting affidavit sworn on 24th February, 2022 explained that the deceased's estate was subdivided in line with the conformed grant but some beneficiaries got 2 portions to cover for the developments that each beneficiary had made on the estate.
4. This court finding the explanation reasonable, set aside orders cancellation of titles made on 10th November, 2021 and directed that the grant be implemented.
5. The Applicant has not demonstrated that any of the beneficiaries failed to get what was lawfully distributed to them. He similarly does not dispute that some beneficiaries got 2 portions to cover for the developments that each beneficiary had made on the estate.



6. Clearly the implementation of the grant as explained by the 1st Respondent was fair and just and there cannot be any reason to interfere with it for as contended by the 1st Respondent, it will not only confuse the matter but frustrate the beneficiaries. The matter has also been previously determined.

7. The Court of appeal in the case of [William Koross \(Legal personal Representative of Elijah C.A. Koross\) v Hezekiah Kiptoo Komen & 4 others \[2015\]](#) eKLR addressed the issue of res judicata and stated as follows:

“The philosophy behind the principle of res judicata is that there has to be finality. Litigation must come to an end. It is a rule to counter the all too human propensity to keep trying until something gives in. It is meant to provide rest and closure, for endless litigation and agitation does little more than vex and add to costs. A successful litigant must reap the fruits of his success and the unsuccessful one must learn to let go.....”

8. In yet another case, the Court of Appeal in [Kenya Commercial Bank Limited v Benjob Amalgamated Limited \[2017\]](#) eKLR cited with approval the decision in Lal Chand v Radha Kishan, AIR 1977 SC 789 where it was stated that;

“The principle of res judicata is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded in equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue.

The practical effect of the res judicata doctrine is that it is a complete estoppel against any suit that runs afoul of it, and there is no way of going around it – not even by consent of the parties – because it is the court itself that is debarred by a jurisdictional injunction, from entertaining such suit.”

9. With respect, the issues raised by the Applicant in this application are *res judicata* for the reason that they have already been determined by a court of competent jurisdiction.

10. The summons dated 18th July, 2023 and amended on 27th July, 2023 is thus dismissed with costs to the Respondents.

DATED AT MERU THIS 20TH DAY OF DECEMBER 2023



T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

Applicant - Mr. Kimathi for L.Kimathi Kiara & Co. Advocates

For Respondents - Mr. Mwirigi for Mwirigi & Nzomo Company Advocates

