



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1916 OF 2006**

**IN THE MATTER OF THE ESTATE OF KAMOLO MANDIU KINYUMU (DECEASED)**

**FAITH MUNYIVA KAMOLO**

**WAMBUA BENSON KAMOLO.....ADMINISTRATORS/RESPONDENTS**

**VERSUS**

**ELIZABETH KANINI MUSILI.....RESPONDENT/APPLICANT**

**RULING**

1. Before this Court for determination is the Amended summons dated **26<sup>th</sup> July 2021** by which the Applicant **ELIZABETH KANINI MUSILI** seeks the following orders:-

**“1. Malili Ranch Limited do provide details of how and when Agricultural Plot No. 2076 and Commercial Plot No. 1421 changed ownership from the Deceased Benson Kamolo Mandiu to Benson Muuo Kamolo and Nicholas Kyalo Mwakavi respectively.**

**2. Aimi ma Kilungu Limited do provide details of how and when Agriculture Plot No. 667 and Commercial Plot No. 444 were allegedly transferred and to whom they were transferred.**

**3. The Management Committee Kiu Ranch do provide details of the Title they hold in the name of Benson Kamolo Mandiu.**

**4. Costs of the application be in cause”.**

2. The application was premised upon **Rule 73** of the **Probate and Administration Rules** and all other enabling provisions of the law and was supported by Affidavit dated **11<sup>th</sup> June 2021** sworn by the Applicant.

3. The Respondents **FAITH MUNYIVA KAMOLO** and **WAMBUA BENSON KAMOLO** opposed the application through the Replying Affidavit dated **1<sup>st</sup> September 2021** sworn by the **2<sup>nd</sup>** Respondent.

4. The application was canvassed by way of written submissions. The Applicant filed the written submissions dated **25<sup>th</sup> October 2021** whilst the Respondent relied upon their written submissions dated **28<sup>th</sup> October 2021**.

**BACKGROUND**

5. This Succession Cause relates to the estate of **BENSON KAMOLO MANDIU** (hereinafter ‘the **Deceased**’) who died intestate on **6<sup>th</sup> October 2005**. The Deceased was survived by **six (6)** daughters and **two (2)** sons. Following the demise of the Deceased Grant of letters of Administration Intestate were on **29<sup>th</sup> May 2008** issued to **Faith Munyiva Kamolo** and **Wambua Benson Kamolo** as Administrators of the estate.

6. The Applicant herein **Elizabeth Kanini Musili** filed a summons for revocation of Grant dated **20<sup>th</sup> December 2011**. The Applicant alleged that she was the 2<sup>nd</sup> wife of the Deceased and that the Grant was obtained without her participation and/or consent.

7. Vide a Ruling delivered on **26<sup>th</sup> February 2020** **Hon Lady Justice Ali-Aroni** found that the Applicant was indeed the second wife of the Deceased. However, the court declined to revoke the Grant but directed that the Applicant be considered in the distribution of the estate.

8. As directed by the court the Administrators then filed summons for confirmation of Grant dated **13<sup>th</sup> November 2020** in which the Applicant was named as one of the beneficiaries of the estate. In the supporting affidavit of even date, the Deceased's estate was said to comprise of the following:-

**“a) Land at Kiu**

**b) Land at Malili**

**c) Land at Aimi ma Kilingu**

**d) Land at Ulu”.**

A schedule of proposed mode of distribution was annexed to the Supporting Affidavit.

10. The Applicant then filed the Amended Summons seeking details regarding the ownership of the land at **Malili Ranch Ltd, Aimi ma Kilungu and Kiu Ranch**.

11. As stated earlier the application was opposed.

#### **Analysis and Determination**

12. I have carefully considered the Amended summons dated **26<sup>th</sup> July 2021**, the Affidavit in Reply as well as the written submissions filed by both parties. The only issue for determination is whether the prayers sought in this application are merited.

13. Firstly, I note that the Applicant is seeking prayers against parties who have not been enjoined in this Succession Cause. Neither **Malili Ranch Ltd, Aimi ma Kilungu** nor the management Committee of **Kiu Ranch** are parties to this cause. They are not beneficiaries of this estate. No leave has been sought to enjoin them to this suit. As such the parties against whom the Applicant now seeks orders have not had any opportunity to make representations before this court. Natural justice requires that the said parties be granted an opportunity to be heard before any orders are made against them.

14. Secondly, the Applicant appears to be challenging the ownership by the 2<sup>nd</sup> Respondent of certain parcels of land. In his Replying Affidavit dated **1<sup>st</sup> September 2021**, the 2<sup>nd</sup> Respondent has annexed a copy of a receipt and certificate (Annexure ‘**WBK1**’) proving that he is the registered proprietor of five ordinary shares in **Malili Ranch Limited**. The Applicant is challenging the 2<sup>nd</sup> Respondents ownership of said shares. However, the Applicant has not laid any basis for challenging the ownership by the 2<sup>nd</sup> Respondent of the said parcels of land. This probate court is **not** the correct forum to make such challenges. The **Constitution of Kenya 2010 Vide Article 162** set up specialized courts. The **Environment and Land court** is the **only** court to determine questions of **ownership** of land. The Applicant ought to file her claim in the **ELC** not in this Succession Cause.

16. Thirdly this court takes notice of the finding made by **Hon Justice Ali-Aroni** in her judgment delivered on **26<sup>th</sup> February 2020** as follows:-

**“There is no evidence either that in the three years the Deceased and the Applicant lived together they acquired any properties....”**

17. This finding has **not** been appealed against by the Applicant. This application is a veiled attempt by the Applicant to upset that finding. This court cannot sit in review of a decision made by a court of concurrent jurisdiction.

18. Finally, I find that this Amended summons is nothing more than a fishing expedition by the applicant, which the court will not entertain. If the Applicant wishes to challenge the proposed mode of distribution then she is at liberty to file a Protest thereto. I find no merit in the Application. This application is dismissed in its entirety. This being a family matter, I made no orders on costs.

**DATED IN NAIROBI THIS 25TH DAY OF MARCH, 2022.**

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**MAUREEN A. ODERO**

**JUDGE**