



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Eliud Wanyama Saratuki (Deceased) (Succession Cause
19 of 2008) [2022] KEHC 11469 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 11469 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 19 OF 2008**

SN RIECHI, J

JUNE 30, 2022

IN THE MATTER OF THE ESTATE OF ELIUD WANYAMA SARATUK

BETWEEN

CHRISTINE WANYAMA SARATUKI 1ST PETITIONER

GEORGE NANDOKHA WANYAMA 2ND PETITIONER

AND

JOHN MACHASI WANYAMA 1ST RESPONDENT

CAROLYNE KITUYI WANYAMA 2ND RESPONDENT

RULING

1. By an application dated December 31, 2021, the 1st petitioner Christine Wanyama Saratuki and the 3rd petitioner, George Nandokha Wanyama brought under the provisions of section 47 of the *Law of Succession Act*, Rules 49 and 73 of the *Probate and Administration Rules* and sections 3 and 3A of the *Civil Procedure Rules*, the applicants seek the following orders;
 1. Vesting orders be issued directing the Deputy Registrar of this court to sign all the transfer documents on behalf of the 2nd and 4th petitioners/respondents herein and vest their respective shares of the deceased's beneficiaries as reflected in the certificate of confirmation of grant issued by this court on 26/7/2021 in the names of the beneficiaries.
 2. Costs of the application be provided for.
2. The application is supported by the applicants' joint affidavit sworn on even date. They depone that a certificate of confirmation of grant was issued by this court on 26/7/2021 and up to date, the respondents have refused and or neglected to execute the necessary documentation so their respective shares can vest to them. That the respondents are intent on disinheriting them of their shares of the



estate and since they have a collective responsibility under section 83(f)-(i) of cap 160, it is their prayer that the Deputy Registrar of this court does execute the said transfer documents.

3. The applicants have particularized the specific instances where they allege that the respondents have abdicated their role as administrators in ensuring that the estate is distributed through their further affidavit sworn on February 14, 2022.
4. The application is opposed by the affidavits of Carolyn Kituyi Wanyama and Florence Khwaka Wanyama whose gist is that one of the assets contained in the schedule particularly Bungoma Township/3XX is registered in the name of Florence Khwaka Wanyama who is alive and is therefore not available for transmission to the applicants or any other beneficiary of the estate.
5. The application was disposed of by way of written submissions. Both parties complied and the same have been considered.
6. It is not in dispute that this matter has been in the corridors of this court since 2008. It has been subject of litigation up to the Court of Appeal in Civil Appeal No 223 of 2019 which amended this court's distribution on some assets. The court subsequently issued a rectified certificate of confirmation in line with the Court of Appeal's decision.
7. Turning to the contention that Bungoma Township/3XX is registered in the name of a living person, the widow, it is my finding that this issue was the subject of the aforesaid appeal regarding its distribution. The Appellate Court on the issue having considered the history of the parcel stated;

Similarly, having found that there was an error in the application of section 40 in respect of the entire estate, we are minded to interfere with the equal distribution of the estate by setting aside the decision and substitute it with an order distributing half of Plot No 3XX Bungoma Town to the 4th house while the other half will be shared equally by the 1st, 2nd and 3rd houses on account of what we have said regarding the distinction between children in need of upkeep and those who are adults. That is the only aspect of the judgment that deserves to be disturbed

8. This aspect of the appellate court's judgement has not been set aside to date and therefore stands. This court is precluded from inquiring on the appropriateness of its distribution. The respondent's contention on the issue of this parcel of land is therefore without merit and is therefore rejected.
9. On the issue that the respondents have refused to execute the necessary documentation to effect transmission of the properties in question, rule 73 of the Probate and Administration Rules provides;

Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.
10. Having stated that the cause has been in the courts for far too long, in light of rule 73, the court is empowered to make orders as may be necessary for the ends of justice to be met. This court has no powers to make any other order on distribution but to issue orders to operationalize the certificate of confirmation of grant and the distribution therein.
11. In the end, I find no plausible reason advanced by the respondent for their refusal or neglect to execute the necessary documentation to enable transmission of the properties to the respective beneficiaries. I therefore issue the following orders;



1. The 2nd and 4th petitioners are hereby ordered to execute documents of transfer of the properties in issue within 30 days from the date hereof failure of which the documents shall be presented before the Deputy Registrar of this court for execution.
2. The 2nd and 4th petitioners are directed to appear before the Branch Manager, Diamond Trust Bank Bungoma for the distribution of the monies held therein within 30 days from the date hereof failure of which either party shall be at liberty shall be at liberty to apply.
3. There shall be no order as to costs.

DATED AT BUNGOMA THIS 30TH DAY OF JUNE, 2022.

S.N. RIECHI

JUDGE

