



**In re Estate of the Late MCW (Succession Cause 2569 of 2003)
[2022] KEHC 9989 (KLR) (Family) (29 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 9989 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2569 OF 2003
AO MUCHELULE, J
JUNE 29, 2022**

IN THE MATTER OF THE ESTATE OF HIS EXCELLENCY THE LATE MCW (DECEASED)

BETWEEN

DLM APPLICANT

AND

AM RESPONDENT

AND

MNW INTERESTED PARTY

RULING

1. The deceased MCW was the Vice President of the Republic of Kenya when he died intestate on August 23, 2003. He left a widow Ambassador YNW, several children (who included the respondent AM) and his mother EN as beneficiaries. The widow died on January 25, 2018. The mother of the deceased has also since died.
2. The co-administrators of the estate of the deceased are the applicant DLM and the respondent, both children of the deceased. They were appointed on February 3, 2020.
3. The estate was partially distributed and a certificate of confirmation issued on July 14, 2020, and rectified on February 22, 2021. The present dispute relates to two properties in Karen. They are LR No. XXX/X and LR No. XXX/X. According to the applicant, these properties have since 2015 been registered in the name of his mother (the deceased’s widow) and should not be subjected to distribution in this estate as they do not belong to the deceased. His case is that the deceased had before his death gifted the two properties to his widow.



4. According to the respondent (and the interested party MNW – another child of the deceased), the deceased had prior to his death entered into an agreement dated March 3, 2003 to buy the properties from their owner JAC for Kshs.43,500,000/= and had paid a deposit of Kshs.4,500,000/=. At the time, the deceased was not married. He married his widow on May 12, 2003. When the deceased died, he had paid a total of Kshs.19,500,000/= towards the purchase of the properties, leaving Kshs.29,000,000/= unpaid. Upon the deceased's death, the Government of Kenya made an ex-gratia payment of Kshs.47,000,000/= to complete the payment for these properties and another property he was buying in Kitale. The vendor herein was paid what was due to him and he transferred the properties to the widow in whose name they became registered. It was on Kitale property that the deceased was buried. Both the Karen properties and the Kitale property became the homes of the deceased's family.
5. When the respondent sought that the Karen properties be distributed to the deceased's beneficiaries the applicant filed the present preliminary objection dated March 12, 2021 challenging the jurisdiction of this court to hear and determine the question whether the two properties form part of the estate of the deceased. This is because, according to him, the two properties belonged to the deceased's widow; and that, if there is a dispute as to the ownership of the two properties, the court with the jurisdiction to hear and determine the matter would be the Environment and Land Court created under Articles 162(2) and 165 of the Constitution and section 13 of the Environment and Land Act (No. 19 of 2011). He argued that a succession court's jurisdiction is limited to dealing with the free property of the deceased, the identification of the beneficiaries and dependants of the deceased, and the distribution of the properties to the beneficiaries and dependants in accordance with the Law of Succession Act (Cap. 160).
6. According to the respondent and the interested party, there is no dispute about the ownership of the two properties. The deceased was buying the properties when he died. Upon his death the Government of Kenya paid the balance. The deceased's widow was registered, and this is not in dispute, because she had obtained a limited grant of letters of administration ad colligenda bona on September 12, 2003 in this succession cause.
7. The basis upon which the applicant claims that the two properties belonged to the deceased's widow was that she was at the time of her death the registered proprietor and that happened because the deceased had gifted them to her. If the deceased had gifted them to her, then they belonged to him and the issue whether or not he gifted her to the exclusion would be a matter for this succession court to interrogate. What is clear is that the deceased died intestate. As for the registration, the affidavits of the respondent, the interested party, Hon. Moses Masika Wetangula, Hon. Cyrus Jirongo and correspondence from the Honourable the Attorney General all clearly show that the deceased was buying the properties, he had not completed the purchase when he died, and that, upon his death, the Government made an ex-gratia decision to pay the balance. This was an arrangement to honour the fallen Vice President. The widow of the deceased became registered when she became the administratrix of the estate of the deceased. In that capacity, under sections 79, 82 and 83 of the Law of Succession Act, she held the property on behalf of the estate of the deceased. It was not her property. It was never her property. This was the deceased's free property. Such property belongs to the estate of the deceased, to be dealt with under the Act.
8. In short, the applicant is stretching the facts of this case when he claims that there is a dispute as to the ownership of the two Karen properties. There is absolutely no dispute. Consequently, I find that the preliminary objection dated March 12, 2021 is not sustainable and dismiss it with costs.

DATED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JUNE, 2022.

A.O. MUCHELULE



JUDGE

