



**In re Estate of William Chongin Chumba (Deceased) (Succession Cause
222 of 1992) [2022] KEHC 12630 (KLR) (29 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12630 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 222 OF 1992**

WM MUSYOKA, J

JULY 29, 2022

IN THE MATTER OF THE ESTATE OF WILLIAM CHONGIN CHUMBA (DECEASED)

RULING

1. The administrator has placed before me a Motion, dated 10th January 2022. He invites the court to direct the Land Registrar on how to implement the orders of 3rd November 2021. He avers that the Land Registrar has declined to act on the orders of 3rd November 2021, as they do not direct him on what to do with Kakamega/Soy/219.
2. The orders of 3rd November 2021 were not directed at the Land Registrar, but relate to whether the succession cause of the deceased herein could be consolidated with that of his widow, who post-deceased him. I directed that the two causes could not be consolidated as they relate to estates of different individuals.
3. The Land Registrar, according to section 61(2) of the *Land Registration Act*, No. 3 of 2012, acts on the certificate of confirmation of grant, with respect to transmission of land upon death, and not on any other order or direction of the court. The certificate of confirmation of grant on record, with respect to the instant estate, is that dated 21st September 1993, as amended by that dated 10th November 2021. That is the document that the administrator ought to place before the Land Registrar for action in terms of section 61(2) of the *Land Registration Act*.
4. Section 61(2) of the *Land Registration Act* states as follows:
 - “ 61. Transmission on death of a sole proprietor or proprietor in common
 1. ...
 2. Upon confirmation of a grant, and on production of the grant the Registrar may, without requiring the personal representatives to be registered, register by transmission –
 - a. any transfer by the personal representative; and



- b.
3. In this section, “grant” means the grant of probate of the will, the grant of letters of administration of the estate or the grant of summary administration of the estate in favour of or issued by the Public Trustee, as the case may be, of the deceased proprietor.”
5. There should be no transmission in terms of the certificate of confirmation of grant that was issued in Kakamega HCSC No. 243 of 2006, dated 10th November 2009, because the late Eunice Cherotich Chongin was not entitled to the whole of Kakamega/Soy/219, but to only 16.8 acres from it, as per the certificate of confirmation of grant dated 21st September 1993, as amended on 10th November 2021. The rest of the acreage of Kakamega/Soy/219 should be transmitted to the two sons, that is to say Barabara Danisi Ngetuny and Kiptesot Clement arap Too.
6. The administrator in the estate of the late Eunice Cherotich Chongin, in Kakamega HCSC No. 243 of 2006, should have the confirmation orders of 20th September 2009 reviewed and the certificate of confirmation of grant dated 10th November 2009 amended, to bring them into line or conformity with the certificate of confirmation of grant issued in Kakamega HCSC No. 222 of 1992, dated 21st September 1993/10th November 2021.
7. Transmission in accordance with respect to the confirmation orders made in Kakamega HCSC No. 243 of 2006 can only happen after that in Kakamega HCSC No. 222 of 1992 has been completed, and after the confirmation orders in Kakamega HCSC No. 243 of 2006 are aligned to those in Kakamega HCSC No. 222 of 1992.
8. The quagmire that the parties find themselves in can only be blamed on them. After they obtained confirmation orders in Kakamega HCSC No. 222 of 1992 in 1993, they went to sleep for over 10 years. Instead, of having the certificate of confirmation of the grant of 1993 placed before the Land Registrar, for transmission, they sat on it until the late Eunice Cherotich Chongin, who was an administratrix and a beneficiary of the estate in Kakamega HCSC No. 222 of 1992, died. They then embarked on seeking, through Kakamega HCSC No. 243 of 2006, to have transmission of her share in Kakamega/Soy/219 to their names, when the same had not yet moved from the estate in Kakamega HCSC No. 222 of 1992 to her estate.
9. The parties should do the right thing. Each right thing should be done at its own right time, step by step. The parties should complete the transmission of the estate in Kakamega HCSC No. 222 of 1992 before they move to transmit the estate in Kakamega HCSC No. 243 of 2006. The asset they seek to transmit in Kakamega HCSC No. 243 of 2006 is yet to be transmitted from the estate the subject of Kakamega HCSC No. 222 of 1992, for Kakamega/Soy/219 is still an asset in the estate in Kakamega HCSC No. 222 of 1992, and is not available for transmission in the estate in Kakamega HCSC No. 243 of 2006 until that in Kakamega HCSC No. 222 of 1992 has been completed.
10. Court processes are not in vain. They ought to be followed through to the very end. So that the confirmation orders made in Kakamega HCSC No. 222 of 1992 should have been followed through to the very end, through presentation of the certificate of confirmation of grant to the Land Registrar, under section 61(2) of the *Land Registration Act*, for transmission and issuance of title deeds after the necessary subdivision of Kakamega/Soy/219. The probate court process is literally over. It ended with confirmation. Upon confirmation of the grant, the process moves from the court to the lands office. What remains, in the two matters before me, relating to Kakamega/Soy/219, is for the parties to have the transmissions done at the lands office through the certificates of confirmation of grants issued to them by the probate court. There is nothing more for the court to do.



11. The record before me indicates that the beneficiaries went ahead and sold portions of the estate to third parties, either before or after confirmation. The property of a dead person is not to be sold to anyone before confirmation of grant. Even when sales happen after confirmation, the processes of sale have nothing to do with the probate or succession process. The probate court should not entertain any claims from buyers of such assets. Sales of estate assets to third parties is outlawed, principally because the sellers would be selling assets that have not yet vested in them. The buyers should pursue the sellers, after the property is transmitted to the sellers, following confirmation of grant, for the sellers to transfer the portions sold to them. The probate or succession court is not a land court. It does not exist to resolve land disputes between buyers and sellers of estate land.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 29th DAY OF JULY 2022

W.M. MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Stephen Kimutai

Martin Mutimba

Antony Mutimba

