



In re Estate of Joseph Kipkirui Chuma (Deceased) (Succession Cause 114 of 2014) [2022] KEHC 14648 (KLR) (31 October 2022) (Ruling)

Neutral citation: [2022] KEHC 14648 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 114 OF 2014**

PJO OTIENO, J

OCTOBER 31, 2022

IN THE MATTER OF THE ESTATE OF JOSEPH KIPKIRUI CHUMA (DECEASED)

BETWEEN

FRANCIS MUZEE KIRUI PETITIONER

VERSUS

MUSA KARAKACHA 1ST OBJECTOR

JOHN MUTSAMI 2ND OBJECTOR

RULING

1. When the matter was in court on the June 7, 2022, the court was told that there was about 10 protests by persons claiming interests in the estate as purchasers. The court then posed to the parties if it would not be prudent and time saving to consider dealing with the question of whether the court had jurisdiction to determine the interests and claims by purchaser.
2. Parties agreed and it was then directed that both sides file submissions on that point. The matter was then scheduled for mention on July 26, 2022 to confirm compliance. On the mention date, the petitioner confirmed having filed submissions but the protestors had not only failed to file submissions but equally made no representation in court. Even as I write this decision for delivery in the afternoon, no submissions by the protestors have been placed in the court file. I have therefore prepared the decision without input by the protestors by way of submissions.
3. In the submissions filed by the petitioner, it is contended that the affidavits of protest filed make a claim as purchasers of the estate property. On that basis the petitioner contends that such transactions take the face of intermeddling with the estate, are forbidden by section 45 (1) of the *Law of Succession Act* and therefore not the province for handling by this court as a probate court.
4. The decisions in *Muriuki Musa Hassan v Rose Kanyua & 4 Others [2014] eKLR*, *Re Estate of John Gakunga Njoroge [2015] eKLR* and *Re Estate of Alice Mumbua Mutua (deceased) [2017] eKLR* for the proposition of the law that transactions over the estate property before grant and confirmation



thereof are not enforceable in a succession cause for reasons that purchasers are not beneficiaries or creditors to the estate as such are not permissible under the law and that the mandate of a succession is to settle dispute only between the administrators, liabilities and beneficiaries. To the petitioners, the claim by the protestors are the kind that fall for determination by the *Environment and Land Court Act* pursuant to article 162 (2) of the *Constitution*.

5. In this court's view, succession causes should be smooth sailing causes limited to disputes between family members and limited to questions whether a property is or not a part of the net estate, whether one is or is not a child to the deceased, whether one had been gifted by the deceased during the deceased life and therefore such gifts need to be taken into account in the scheme of distribution.
6. It is not the mandate of succession cause to delve into the dealings over the estate property before or after death. Where there be a controversy as to whether any transaction was undertaken and not concluded even by the deceased before death, and where the administration do not admit such liability, the only avenue open to such a claimant is to establish its claim before a civil court, in the usual way, then seek to enforce the resultant decree against the estate.
7. Disputes against the estate or indeed against the beneficiaries and the administrators by 3rd parties, are not inheritance disputes and thus ill-suited to be handled within a succession cause. It is the view of the court that claims other than those asserting the right to be entitled to inherit must not be invited into the dispute between inheritors. It is desirable to exclude the third party claims so that the family handles their issues and disputes as family.
8. It is unfortunate that some of the overly old succession causes pending in court have been held hostage in the court system by pure civil claims, either based on contracts or just claims upon trust. To this court such confusion must be discouraged by the court standing its ground and asserting that only inheritance disputes need be dealt with in probate cases. That is the view that I find to be firmly entrenched and trite from decisions of the High Court and courts of equal status and permits to the Court of Appeal.
9. When the principles above as informed by decided case is applied to the facts of this matter, the court finds that the affidavits of protest filed by James Wamalwa, Michael Mukoya Watulo, Benson Kivumo, Aaron Kaguri, Violet Omusebe Okeno, Musa Shitakwa Mukhanatsi, Mary Anita Mukoya, Jossy Njama Walumbe, Kennedy Daniel Kuloba, John Kabuteny Mukotse, Enock Juma Owobilo and John Mutsami, (twelve affidavits) all claim rights to the estate land not as beneficiaries or dependants but as purchasers. Some of the documents exhibited to show purchase date back to the year 1989 when no pursuit was made to complete the sale till 2017.
10. If the claim was to be handled as a succession dispute, the court would be called upon to interrogate among other legal questions, whether the claim was affected by limitation; whether the sale agreements pass as controlled transaction and if consent were ever sought and obtained and if the contracts were indeed executed in accordance with the *Law of Contract Act*; not to mention the very important question whether there were spouses whose consent were due to be sought and obtained and if same were so obtained. Such questions clearly transcend the mandate of the probate court and to invite them here would do nothing but to trammel and convolute a dispute that ought to remain a family dispute.
11. I do therefore find that the protests filed are all ill-suited to be handled as protest against proposed distribution of the estate and are therefore struck out to enable the protestors approach the appropriate courts appropriately.
12. I make no orders as to costs but direct that the pending application for confirmation of grant be heard on December 8, 2022 when all beneficiaries must attend court.



DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 31ST DAY OF OCTOBER 2022.

PATRICK J O OTIENO

JUDGE

In the presence of:

Ms Tom for the petitioner

Mr Mbaka for Khayumbi for the Objectors

Court Assistant: Polycap Mukabwa

