



**In re Estate of Onyiego Marimbu (Deceased) (Succession Cause
70 of 1999) [2022] KEHC 14860 (KLR) (31 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14860 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
SUCCESSION CAUSE 70 OF 1999
REA OUGO, J
OCTOBER 31, 2022
IN THE MATTER OF THE ESTATE OF ONYIEGO MARIMBU (DECEASED)
AND
OGEA ONYIEGO MARIMBU.....APPLICANT
VERSUS
GABRIEL ONYIEGO MARIMBU.....1ST ADMINISTRATOR
FREDRICK JOSHUA ONYIEGO.....2ND ADMINISTRATOR
AND
ISAAC MANGUTI KEENU.....INTERESTED PARTY**

RULING

1. This cause concerns the estate of Onyiego Marimbu (deceased). The deceased had two parcels of land, Parcel LR No Bassi/bogetaorioII/1060 and 1475 (herein after referred to as parcel 1475 and 1060). Cremencia Onyiego (also deceased), Fredrick Joshua Onyiego and Gabriel Onyiego Marimbu were appointed as joint administrators of the estate. The parties opted for arbitration before the chief to resolve the issue touching on distribution. After the arbitral process, it was agreed that parcel 1475 was to be distributed between the deceased wives, Nyangosa and Mogiti. Parcel 1060 was to go to the deceased other wife Cremencia Onyiego but upon her death it was to devolve to the deceased's other 2 wives or their children. The arbitral award was adopted by the court and grant confirmed on April 18, 2002.
2. The applicant, Ogea Onyiego Marimbu, filed summons for revocation of grant dated March 25, 2015 seeking the revocation of the grant issued to Cremencia Onyiego, Fredrick Joshua Onyiego and Gabriel Onyiego Marimbu and confirmed on April 18, 2002. He also sought for the court to cancel all the subdivisions and that the title reverts back to the deceased's name.
3. The application is on grounds that the administrators have failed to distribute the deceased estate to the beneficiaries. It was averred that strangers have invaded the land where the applicant's home is and



- where he has been cultivating. He attempted to report the trespassers at the police station but another report had been made against him on the charge of causing disturbance. He later went to the lands registry only to be told that the title to parcel 1160 had been closed following the subdivisions made on January 15, 2013. The land with the new title numbers was transferred by way of transmission to the names of the administrators. According to the applicant the deceased had 4 wives.
4. On July 6, 2015 the interested party, Isaac Manguti Keengu, in opposing the application filed a replying affidavit that the administrators approached him desirous to sell LR Nos Bassi/bogetaorio/II/4157 & 4158. The interested party averred that the administrators explained that they had obtained letters of administration which were later confirmed in regard to the deceased's estate. The land was in the name of the administrators according to an official search and an agreement was drawn between the administrators and the interested party. The administrators then sought for the Lands Controls Board consent to subdivide the land into LR No Bassi/bogetaorio/II/4296, 4297, 4298 and 4299. LR No Bassi/bogetaorio/II/4296 and 4299 were transferred in his name.
 5. Gabriel Onyiego Marimbu filed a replying affidavit dated June 29, 2015 and denied that the deceased did not have 4 wives. He had 2 parcels of land, parcel 1475 was subdivided into two. Parcel 1475 devolved to the 3rd house and represented in the administrations by one of the sons from the 3rd house, Fredric Joshua Onyiego. Parcel 1476 devolved to the 1st house of Nyangosa and the title is in the name of Nyangosa. Parcel 1060 was left for the deceased 2nd wife Clemencia Onyiego. In compliance with the chief's award they subdivided parcel 1060 into 2, Bogetaorio II/4157 (Nyangosa) and Bogetaorio II/4158. It was averred that the applicant has definite share of the estate measuring approximately 0.08 ha out of Bogetaorio II/4157. That it is the applicant who has all along refused to sign transfer documents so that they process the transfer of title in his favour. The emerging titles represent definite shares of either beneficiaries or their assigns. He averred that he has together with the co-administrators sold land, however the transactions were in respect of their respective shares in the estate as per the award by the chief's award, and those cannot be said to be a failure to administer the estate.
 6. Fredrick Joshua Onyiego in his replying affidavit dated July 7, 2015 averred that on December 14, 2012 the surviving administrators caused parcel 1060 to be divided into two portions, LR No Bassi/bogetaorio II/4157 and 4158. LR No Bassi/bogetaorio II/4158 was registered in his name to hold on behalf of the 2nd house. LR No Bassi/bogetaorio II/4157 was registered in his co-administrators name to be utilized by the 1st house. He was therefore obliged to subdivide parcel LR No Bassi/bogetaorio II/4158 amongst his brothers, but they all agreed that he should first file a case for eviction of Robert Sangini who was trespassing. Once he obtained judgment in Kisii ELC Cas No 90 of 2013, the 2nd house agreed that a portion of the land be sold to enable them settle hospital expenses of their brother Abel Momanyi Onyiego. Parcel 1475 is still registered in the name of the surviving administrators pending the distribution between the two houses. He also pointed out that the applicant's advocate Momanyi Aunga Advocate had earlier represented the deceased co-administrator and therefore a violation of professional ethics.
 7. The parties gave viva voce evidence at the hearing of the application. Ogega Onyiego Marimu (Pw1) adopted his statement as his evidence in chief. He testified that indeed they went to the chief and it was agreed that parcel No 1060 be divided between the 2 houses, house of Nyangosa and Mogitis house. However this was not done. He explained that when Cremencia died, he was arrested and when he was released, he found his trees, bananas plants plus sugar cane cut. Although the parcel 1060 is divided into 6 portions, parcels No 4295, 4294, 4296, 4297, 4298, 4299 the beneficiaries do not have the titles to the land. He explained that they are 4 brothers Omuga, Onyiego Gabriel Onyiego, Onyanyi Onyiego and he is the fourth son but they are without titles. On cross examination he testified that both the administrators have titles. He admitted to refusing to sign documents that would enable transfer of



the property he occupies to his name, however he explained that this was because he was looking out for his deceased brother's children who also require a share of the estate.

8. Gabriel Onyiego Marimbu (Dw1) testified that he was an administrator of the deceased's estate and adopted his written statement dated October 9, 2015 which restate the contents of his replying affidavit dated June 29, 2015. On cross examination he testified that the succession was complete in regards to parcel No 1060 and 1475. He admitted to have sold parcel No 4295 to Hillary Abimba.
9. Fredrick Joshua Onyiego (Dw2) adopted his statement dated October 12, 2015 rehashing his evidence in the replying affidavit. He testified that the applicant was his step brother. He testified that he had not failed to carry out proper administration of the estate. Parcel 1060 was divided as per the chief's verdict into 2 portions to be shared amongst the 2 houses with each house getting 0.30Ha. He testified that members of the 2nd house have not complained. On cross examination he testified that the titles are in his name.
10. Isaack Manguti Keengu (Dw3) testified that after buying the shamba from the administrators, they went to the advocate's office and a sale agreement drafted. He went to the Land Control Board and got the numbers indicated 4296, 4297, 4298, 4299.
11. The applicant in his submissions argues that it is only the administrators who have titles for parcel 1060 and they have left out the other 6 beneficiaries. He also submits that the administrators have failed to complete the administration of the estate despite the grant having been confirmed in 2002. Section 83 (g) of the *Law of Succession Act* ('the LSA') makes it mandatory that the administration must be completed within 6 months after the confirmation of grant. The 2 administrators have failed to comply with the provisions of Section 83 (g) of the *LSA* and that the court should appoint him the sole administrator. He also submitted that the administrators failed to comply with the provisions of Section 76 (d) (ii) & (iii) of the *LSA*.
12. The 1st co-administrator in his submissions argued the applicant has failed to establish any ground for the cancellation of the titles that were issued to the third parties who lawfully purchased their land. He argues that the grant was confirmed and therefore the administrators had the power to sell the land. The purchasers produced sale agreements clearly indicating that the transaction was valid. In any event the applicant failed to enjoin the purchasers as parties to the proceedings, particularly Hillary Mecheo Apima. The court therefore lacks the jurisdiction to grant the orders sought.
13. The 2nd co-administrator in his submissions argued that the parties on July 1, 2020 entered into consent not to revoke the grant issued. The co-administrators sold part of parcel 1060 based on the specific needs of the beneficiaries. If the grant were to be annulled, the annulment would not affect the transactions with the third parties pursuant to section 93 of the *LSA*.

Analysis and Determination.

14. I have considered the pleadings, the evidence of the parties, their submissions and the law. The revocation of grant was on grounds under section 76 (d) (ii) & (iii) of the *LSA*. The provision provides as follows:

76. Revocation or annulment of grant

“ A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-

- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-



- (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or
- (ii) to proceed diligently with the administration of the estate; or
- (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

15. Indeed the grant in this matter had been confirmed on the April 18, 2002 and there has been very little steps taken by the administrators in ensuring that they complete the administration of the estate. The administrators are yet to transfer the estate to the respective beneficiaries. However, from the record, it is shown that on July 1, 2020, the parties entered into the following consent:

- a. Parties mentioned in the surveyor's report dated August 21, 2019 who are in occupation of LR Parcel No 1475 to attend court to confirm occupation and distribution as indicated on a given date.
- b. Parties to proceed to hearing on mode of distribution of Parcel Bassi/Bogetaorio II/No 1060.
- c. Mr Momanyi shall pursue prayers (i) in the application dated March 25, 2015.
- d. The grant shall not be revoked
- e. Parties to ensure that the matter is expeditious as heard as it is a 1999 matter.

16. In essence, the distribution of parcel 1475 should follow the award by the chief to be distributed amongst the members of the 1st and 2nd house and titles issued to its members. While I may find it not necessary to revoke the grant the parties having entered the above consent, I find that the administrators have shown sluggishness in the administration of the estate. They were required to distribute parcel 1060 to the beneficiaries in the two houses but instead subdivided the parcel sold part of it to third parties and had the remainder registered in their names.

17. A report dated August 21, 2019 was filed by the County Surveyor, David Lemayian with the following findings. Parcel 1060 was subdivided into parcels 4156 and 4157 measuring 0.3 ha respectively. Parcel 4157 was further subdivided into parcels 4294, 4295, 4296 measuring 0.08ha, 0.08ha and 0.14ha respectively. Parcel 4158 has been subdivided into parcel 4297, 4298 and 4299 measuring 0.08ha,0.08ha and 0.14ha respectively. The titles to the parcels are registered in the following names:

Parcel No Name Area

4294 Gabriel Onyiego Marimbu 0.08 Ha

4295 Hillary Mecheo Apima 0.08 Ha

4296 Isaac Manguti Keengu 0.14 Ha

4297 Fredrick Joshua Onyiego 0.05 Ha

4298 Hillary Mecheo Apima 0.08 Ha

4299 Isaac Manguti Keengu 0.14 Ha



18. However, it was noted that Ogega Onyiego Marimbu is in occupation of parcel 1060. The surveyor also noted that the deceased's beneficiaries occupy two parcels of land, parcel 1475 and 1476. The beneficiaries in occupation include: Omuga Onyiego Marimbu (deceased) occupying 0.37 Ha; Onyoni Onyiego Marimbu (deceased) occupying 0.50 Ha; Ogega Onyiego Marimbu occupying 0.50 Ha; Daniel Kitera Onyiego occupying 0.171 Ha; Gabriel Onyiego Marimbu occupying 0.399 Ha; Fredrick Joshua Onyiego occupying 0.17 Ha; Paul Marimbu Onyiego occupying 0.18 Ha; and Abel Momanyi Onyiego occupying 0.17 Ha. Parcel No 1475 measuring approximately 1.10ha.
19. The 2nd co-administrator in his submissions argued that section 93 of the LSA did not allow for cancellation of title to the third parties. Section 93 (1) of the LSA provides as follows:
- “(1) All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.”
20. At the time the administrators sold part of parcel 1060 to the third parties, the court has issued and confirmed the grant of representation. The administrators were not mere intermeddlers but had the power to deal with the deceased estate and it would be not be in order to cancel the third parties' titles after they made payments to the administrators who had in turn transferred the properties in their names.
21. It is not in dispute that parcel 1060 was subdivided into 6 portions three of which have been sold. The administrators gave evidence that the parcels sold were to cover some of the beneficiaries' expenses incurred during various hardships such as illnesses. How therefore can parcel 1060 be subdivided without first ascertaining the beneficiaries that benefited from the proceeds of the unsold portions of parcel 1060? I note that land parcel Bassi/bogetaorio II/4294 and 4297 have been registered in the names of the administrators which they hold in trust for the beneficiaries. It is important for the court to know which beneficiaries benefited from the sale of properties made by the administrators and this can only be ascertained after rendering accounts by the administrators.
22. Section 83 of the LSA provides as follows;
- “83. Personal representatives shall have the following duties—
- (a) ...
 - (b) ...
 - (c) ...
 - (d) ...
 - (e) ...
 - (f) ...
 - (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;



- (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

23. In *re Estate of the Late Mwaura Makuro (Deceased) [2021] eKLR* the reasons for rendering accounts was emphasized as follows:

32. The production of accounts is a key component of the administration process of a deceased person's estate. From the moment a grant is issued to a personal representative of a deceased person, the grant holder becomes responsible to the Court in the carrying out of the duties of administrator. Accounts are an accountability tool that will tell the Court whether the administrator has been faithful to the role entrusted to him or her. When an administrator fails to file accounts as required, questions as to the integrity of the process are bound to arise as in the present case. The law has empowered the Court on either of its own motion or on the application of any interested party in the estate, to order an administrator to produce a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.

24. In the end, I direct the two administrators to file a full and accurate inventory of the assets and liabilities of the estate and an account of their handling of the estate of the deceased in keeping with section 83 of the *Law of Succession Act* within 60 days from the date of this Ruling. Upon the filing of the aforementioned inventory and accounts, the Applicant will be at liberty to move the court appropriately for other or further orders arising from the said account. There shall be no orders as to costs.

DATED, SIGNED, AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT BUNGOMA THIS 31ST DAY OF OCTOBER 2022.

R E OUGO

JUDGE

In the presence of:

Mr Momanyi for the Petitioner

Mr Mulisa for the 1st Co-Administrator & Interested Party

Mr Oyugi holding brief Mr Nyatundo for 2nd Co-Administrator

Wilkister: Court Assistant

