



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

In re Estate of Nathan Mukulo Cheptuli (Deceased) (Succession Cause 427 of 2013) [2022] KEHC 16926 (KLR) (23 December 2022) (Ruling)

Neutral citation: [2022] KEHC 16926 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 427 OF 2013**

**WM MUSYOKA, J
DECEMBER 23, 2022**

L

RULING

1. The deceased herein, Nathan Mukulo Cheptuli, died on May 18, 1999, according to death certificate serial no 074762, of 3rd January 2012. A letter from the assistant chief of Fuvuye sub-location, which is undated, indicates the deceased to have been survived by a son, Tito Nathan Mugulo, and 5 other individuals, whose relationship with him is not disclosed, that is Zakayo Mukulo, Safania Kwalanda Mukulo, Timothy Chimongoi Mukulo, Harun Mukulo and Saulo Namis Mukulo. A certificate of official search, dated June 17, 2013, was filed to show that he died possessed of N/ Kabras/ Malava/1180.
2. Representation to his estate was sought by Tito Nathan Mugulo, in his capacity as son, in a petition lodged herein on June 20, 2013. He was said to have been survived by 6 sons, being Zakayo Mukulo, Safania Kwalanda Mukulo, Timothy Chimongoi Mukulo, Harun Mukulo and Saulo Namis Mukulo. He was indicated to have had died possessed of N/Kabras/Malava/1180 and without any debts or creditors. There was filed consent in form 38, in p &a 11, signed by Zakayo Mukulo, Safania Kwalanda Mukulo, Timothy Chimongoi Mukulo, Harun Mukulo and Saulo Namis Mukulo. Letters of administration intestate were made to him on February 21, 2014, and duly issued on April 15, 2014.
3. The application that I am tasked with determining is dated October 23, 2014. It is for confirmation of grant, and it is at the instance of Tito Nathan Mugulo. The survivors are said to be 7 sons. Zakayo Iyat Mukulo, Safania Kwalanda Mukulo, Tito Nathan Mugulo, Timothy Chimongoi Mukulo, Haron Peter Mukulo, Sailas Benja Mukulo and Albert Lumas Samweli. Out of N/ Kabras/Malava/1180, Zakayo Iyat Mukulo is allocated 0.41, Safania Kwalanda Mukulo 0.03, Tito Nathan Mugulo 0.40, Timothy Chimongoi Mukulo 0.42, Haron Peter Mukulo 0.02, Sailas Benja Mukulo 0.20 and Albert Lumas Samweli 0.20. There is a consent on distribution in Form 37, under rule 40(3) purportedly signed by Zakayo Iyat Mukulo, Safania Kwalanda Mukulo, Tito Nathan Mugulo, Timothy Chimongoi Mukulo, Haron Peter Mukulo, Sailas Benja Mukulo and Albert Lumas Samweli.



4. There is a protest affidavit by Ngome Natala, sworn on September 16, 2021. He avers that N/Kabras/Malava/1180 did not form part of the estate, as the same was registered in the name of Rodah Waronya Mukulo since September 17, 1997. The said Rodah Waronya Mukulo and her son are said to have sold 0.7Ha of it on August 12, 2015 to Ngome Natala. NM/Malava/1180 was subsequently partitioned into Kakamega N/kabras/3177,3178,3179,3180,3181 and 3182 he avers that NM/Malava/3180 was allocated to him and Rodah Waronya Mukulo transferred it to his name on June 23, 2006. It is case is not NM/Malava.1180 does not exist. He has attached a certificate of official search dated August 10, 2015 having that Kabras /Malava/1180 was registered in the name of the deceased on September 17, 1997. It shows that February 24, 2006 was closed on February 24, 2006 upon sub division into new numbers being Kabras /Malava/3177 to 3182. There is copy of sale agreement between Rodah Waronya Mukulo and Nathan Ngome Natala dated August 12, 2005., there is a mutation form in respect of North Kabras /Malava/1180 dated July 20, 2005 for its sub division into N/Kabras/Malava/3177, 3178,3179,3180,3181 and 3182, there is a green card for North Kabras/Malava/3180, showing it a sub division from North Kabras/Malava/1180, in favour of Ngome Natala on June 23, 2006, and that a title deed was subsequently issued to Ngome Natala on October 26, 2006.
5. Directions on the disposal of the summons dated October 23, 2014 were given on November 3, 2021, for its disposal on by way of affidavit and oral evidence.
6. The summons was fixed for hearing on January 27, 2021. Come that day only the protestor attended court. He adopted his protest affidavit and the document annexed.
7. The matter was thereafter fixed for mention on April 28, 2022, to receive written submissions. Only the protestor filed written submissions. The said written submissions are dated February 21, 2022. They summarise the facts as set out in the protest affidavit, and make no legal argument.
8. The matter is fairly straightforward. The deceased is said to have died possessed of North Kabras/Malava/1180. The administrator filed a certificate of official search, dated June 17, 2013, showing the deceased as registered proprietor since June 3, 1975. The protestor argues that North Kabras/Malava/1180 did not belong to the deceased, as at the date of his death in 1999, as he had transferred it to Rodah Waronya Mukulo in 1997. He has attached a certificate of official search dated August 10, 2015 to support his case. It shows Kabras/Malava/1180 was registered in the name of Rodah Waronya Mukulo on September 17, 1997. She then subdivided Kabras Malava/1180 into Kabras/Malava 3177 to 3182, and transferred North Kabras/Malava/3180 to the protestor.
9. The fact of existence of 2 certificates of official searches on Kabras/Malava/1180 or North Kabras/Malava/1180, showing that the same belonged to 2 different individuals, after the demise of the deceased suggests that one of the said official searches is false. What I find significant is that the protest of September 16, 2021 was not responded to by the administrator. Secondly, the administrator, unlike the protestor, did not attend court on January 27, 2021, to prosecute the confirmation application, and to bespeak the contents of his certificate of official search dated June 17, 2013, as against that presented by the protestor dated August 10, 2015. That leaves me with the material presented by the protester. He spoke life into them, when he testified on oath. That amounted to defending them. The administrator did not confrovert his case. In any case, the certificate of official search dated August 10, 2015 is supported by the mutation form placed on record, the sale agreement dated July 10, 2005 and the green card. The administrator should have tabled evidence to counteract the evidence presented by the protestor, inclusive of calling the land registrar to speak on the validity of their documents.
10. From the material before me, there is prima facie proof that Kabras/Malava/1180 or North Kabras/Malava/1180 does not exist. It does not form part of the estate of the deceased. As there is no proof that the deceased had other property, apart from North Kabras/1180, I shall hold that the deceased had



no estate that can be distributed at confirmation of grant. The consequence is that there is nothing to confirm for distribution through the application dated October 23, 2014. That application is incapable of being allowed. I accordingly dismiss it. Each party shall bear their own costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 23RD DAY OF DECEMBER, 2022.

WM MUSYOKA

JUDGE

Erick Zalo, Court Assistant.

Ms. Aligula, instructed by Akwala & Company, Advocates for the protestor.

