

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 92 OF 2011

IN THE ESTATE OF ANDASHE MUNYETI (DECEASED)

RULING

1. On 30th September 2020, the sons of the deceased herein entered into a consent on distribution of the estate of the deceased. The said consent was adopted by the court as its order, and it was directed that the certificate of confirmation of grant on record be amended to conform with the said consent. A further order was made commanding Iddi Yahuma to remove a caution that he had lodged in the register to facilitate distribution.
2. Thereafter, a chamber summons, dated 22nd October 2020, was lodged herein, seeking orders for the Deputy Registrar of the High Court, Kakamega, to sign the relevant transfer documents, like mutation forms and application for transfer of land, among others, to facilitate transmission of the property in terms of the certificate of confirmation of grant, dated 30th September 2020. Various other orders were sought against the Land Registrar, with respect to Kakamega/Cheptulu/292.
3. The application was responded to Iddi Yahuma Andashe, saying that the application was premature, as applications under the Land Control Act, Cap 302, Laws of Kenya, had not been made for partition of the land, among others.
4. Both sides have filed written submissions, which I have read and noted the contents, inclusive of the arguments made.
5. After a grant is confirmed, and a certificate of confirmation of grant is processed and issued, the next step would be transmission of the property in accordance with the distribution in the certificate of confirmation of grant. Transmission is not a process under the Law of Succession Act, Cap 160, Laws of Kenya. The Law of Succession Act does not provide for it. Indeed, the term transmission is not even mentioned in the Act. It is a process which is provided for in the Land Registration Act, No. 3 of 2012, and the Land Act, No. 6 of 2012. The process has nothing to do with the succession process. The effect of it is that once the court confirms a grant, and issues a certificate of confirmation of grant, its work would be over. The parties ought to move to the next step, of execution of the confirmation orders, which happens at the land registries and at the offices of other land authorities. The application that has been placed before me dwells on matters that have nothing to do with succession, but registration of land, and the parties are better of addressing the issues to the relevant land bodies.
6. The promulgation of the Constitution, 2010, on 27th August 2010, had one critical consequence, the taking away of jurisdiction from the High Court, with respect to matters relating to land. That comes out very clearly from Articles 162(2) and 165(5) of the Constitution. Parliament passed a law that established the Environment and Land Court. The Land Registration Act and the Land Act, which govern transmission and land registration, carry provisions that make it clear that where disputes or questions or the need for certain actions arise, with respect to issues that are regulated or governed by the two statutes, such as transmission and land registration, then the court to address them is the Environment and Land Court and any subordinate court vested with jurisdiction. These provisions are in sections 2 and 101 of the Land Registration Act and sections 2 and 150 of the Land Act.
7. Once the High Court issues a certificate of confirmation of grant the exercise that follows is transmission, which is not governed by the Law of Succession Act, as I have indicated above, but by land legislation, which legislation is not oversighted by the High Court but by the Environment and Land Court. Issues that arise from implementation of the certificate of confirmation of grant are not within the province of the High Court, and the High Court becomes pretty much *functus officio*, so far implementation of the distribution orders are concerned. The only thing the High Court can do is to amend or review the certificate, but it cannot oversight how the exercise of distribution is carried out, for that oversight lies elsewhere. So much of what is sought in the application dated 22nd October 2020 is outside the jurisdiction of the High Court, especially all those orders sought against the Land Registrar.
8. Let the parties work together to ensure implementation of the certificate of confirmation of grant. If they encounter any challenges with the processes that lie ahead, with respect to removal of cautions and restrictions, getting the land partitioned and mutations done, etc., they should not come back to the High Court, for there is no jurisdiction in the High Court to oversight land authorities. They should move the Environment and Land Court, or any subordinate court with jurisdiction. That should include applications to have the Deputy Registrar of the Environment and Land Court to sign documents that are necessary to facilitate land transmission.
9. I have no jurisdiction to grant the orders sought, for the reasons given. Let the parties move the right court. The estate herein is situated within Vihiga County; the Deputy Registrar shall cause the file to be transferred to Vihiga. Costs shall be in the cause.

DELIVERED, DATED AND SIGNED IN CHAMBERS ELECTRONICALLY AT KAKAMEGA THIS 19TH DAY OF APRIL, 2021

W MUSYOKA

JUDGE