



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Marupia Ngombo (Deceased) (Succession Cause
70 of 2014) [2021] KEHC 9793 (KLR) (30 June 2021) (Ruling)**

Neutral citation: [2021] KEHC 9793 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 70 OF 2014**

JN ONYIEGO, J

JUNE 30, 2021

IN THE MATTER OF THE ESTATE OF THE LATE MARUPIA NGOMBO (DECEASED)

RULING

1. The deceased herein died intestate on August 12, 1969 leaving behind the following as survivors;
 - a. Nyale Marupia (son)
 - b. Jessica Ngombo Marupia (daughter in law)
 - c. Kanze Kazungu Karisa (daughter)
 - d. Dhahabu Lawrence Mapema (daughter)
 - e. Nyevu Kahindi Ndungo (daughter)
 - f. Mbodze Kenga Vumbi (daughter)
2. According to form P and A 5, the only asset left comprising the estate was Plot No Kilifi/Mtwapa/170.
3. On February 24, 2024, Dhahabu Lawrence Mapema petitioned for a grant of representation. The same was issued on July 24, 2014 and confirmed on June 16, 2015 and issued on July 3, 2015. Consequently, the estate was distributed as follows.
 - a. Nyale Marupia and Jessica Ngombo Marupia each to get 4 acres.
 - b. Dhahabu Lawrence Mapema, Kanze Kazungu Karisa, Nyevu Kahindi Ndungo and Mbodze Kenga Vumbi to be registered jointly with each getting one acre.
4. The grant having been confirmed, one Jessica Ngombo Marupia (daughter in law) who was said to be in possession of the original title deed in respect of the subject property refused to release ownership documents to facilitate sub-division of the land. As a consequence, Dhahabu Lawrence Mapema one of the beneficiaries and the administratrix filed the application dated November 18, 2015 with a view to getting orders compelling Jessica to surrender the relevant land ownership documents to expedite the process of land subdivision.



5. The orders were subsequently issued and the documents released to their appointed advocate who commenced the process of sub-division. Albeit resistance from Jessica. However, sub-division was eventually done in the presence of the police with beneficiaries being allocated a portion in which they were either in occupation and or had developed.
6. Having sub-divided the land into three portions namely; Kilifi/Mtwapa/6518, 6517 and 6516, Nyale Marupia was allocated L.R 6518, Jessica Ngombo Marupia LR 6517 and Dhahabu Lawrence Mapema, Kanze Kazungu Karisa, Nyevu Kahindi Ndungo and Mbodze Kenga Vumbi jointly in respect of plot No. 6516 with each getting one acre.
7. Consequently, title deeds were processed unfortunately each in the names of all beneficiaries instead of each beneficiary/beneficiaries getting her/his/their rightful share as prescribed in the certificate of confirmation. However, a dispute arose when the daughters who had been allocated 4 acres jointly attempted to cultivate their portion. There was some allegation that Nyale Marupia and Jessica had attempted to sell part of the four daughters' portion without their knowledge.
8. Aggrieved by the alleged resistance and the purported sale of their portion, the four daughters moved to this court vide an application dated September 18, 2020 seeking orders as hereunder;
 - a. That this application be certified urgent and service be dispensed with at the first instance.
 - b. That one Jessica Ngombo Marupia and Nyale Marupia Ngombo be summoned to this court to show cause why action should not be taken against them for purporting to sell the portion of land designated for the applicants and the other beneficiaries and allowing the purchaser to commence erection of structures on the land.
 - c. That the said Jessica Ngombo and Nyale Marupia Ngombo be committed to Civil jail for a period not exceeding 6 months.
 - d. That this Honourable court be pleased to issue an injunction stopping the respondents and the developer on site to immediately stop any construction and or trespass on the portion designated for the applicant and the other beneficiaries until the succession cause is fully determined and each party has received their respective share.
 - e. That this Honorable court be pleased to order the land Registrar Kilifi to re-issue the title deeds in the manner stipulated in the certificate of confirmation of grant issued by this court on July 3, 2015.
 - f. That the officer in charge of Mtwapa police station and the area assistant chief Mtwapa be ordered to provide security and enforce this court's order to ensure that all the beneficiaries have access to their respective shares of the estate in plot title No. Kilifi/Mtwapa/170.
 - g. That the costs of the application be provided for.
9. The application is anchored on grounds stated on the face of it and averments contained in the affidavit in support sworn on September 18, 2020 by Kanze Kazungu Karisa who claimed that her brother Nyale and sister in law Jessica have encroached to their four-acre land and even sold a portion of it to one Brosdos Zaka Chuma who has already commenced construction.
10. In response, Jessica filed a replying affidavit sworn on December 1, 2020 denying every allegation and accusation of interference with the applicants' allocation. She claimed that she had not been consulted on the appointment of a fresh administrator. She further stated that when the surveyor visited the land, she was not present hence she does not know the actual boundaries on the ground.



11. Regarding the land allegedly sold to Brosdos Zaka, she claimed that it was one acre excised out of her share and that of Nyale. She further claimed that one acre ought to be reserved as a burial site or in the alternative each party to contribute 1/6 of an acre to create a burial site. She denied any acts of interference or obstruction against the applicants' occupation of their rightful share.
12. In their rejoinder, the applicant Kanze Kazungu filed a supplementary affidavit sworn on December 9, 2020, in which she averred that Nyale and Jessica were present when the survey was done. She proposed that the land registrar should re-issue title deeds in accordance with the confirmed grant and that she, Mbodze Kenga and Nyevu Kahindi be jointly registered in respect of the new title deed with the exclusion of the deceased Dhahabu Lawrence.
13. When the matter came up for hearing, parties tried to negotiate and eventually recorded a consent dated March 22, 2021 in the following terms;
 - (1) That status quo as at December 14, 2020 be maintained until completion of the distribution process.
 - (2) That new administrators be named to take over the role of Dhahabu Lawrence Marupia (deceased) and we propose Kanze Kazungu Karisa and Nyale Marupia Ngombo .
 - (3) That application for substitution be signed by both Kanze Kazungu and Nyale Marupia Ngombo in order to expedite the process.
 - (4) The land Registrar Kilifi be ordered to re-issue the title deeds in the names listed as follows;
 - (a) Plot No Kilifi/Mtwapa/6518 Nyale Marupia Ngombo
 - (b) Plot No Kilifi/Mtwapa/6517 Jessica Mbeyu Mwambegu
 - (c) Plot No Kilifi/Mtwapa/6516 to abide the outcome of the court ruling in which parties shall inherit Dhahabu Lawrence Mapema thereafter registration to proceed.
 - d. That all beneficiaries be at liberty to access their portions as surveyed and demarcated by the county surveyor.
14. The said consent was adopted as an order of the court. Both counsel agreed to submit on order No 4 (c) of the consent order with regard as to who is to benefit from the share of the deceased beneficiary Dhahabu Lawrence. Apparently, Dhahabu Lawrence died without leaving a parent, a spouse nor a child. She therefore left no direct heir.
15. Mr Mutugi for the applicants filed his submissions on April 12, 2021 urging that Dhahabu's share of 1 acre should remain within the four-acre portion allocated to the four daughters hence Kanze, Nyevu and Mbodze should be the sole beneficiaries to the exclusion of Nyale and Jessica who already have 4 acres each. In the alternative, Mr Mutugi submitted that, if the grant is revoked, the estate should be distributed equally amongst the beneficiaries so that each gets 2.4 acres.
16. Counsel submitted that it is the daughters / applicants who entirely funded the sub-division exercise hence the claim for one acre to be sold to take care of succession expenses is not tenable.
17. On his part, Mr. Kadima filed his submissions on March 10, 2021 stating that, besides Dhahabu's demise, Mbodze Kenga Vumbi had also died. That Mbodze's share should go to her heirs Nyevu Kenga and Tabu Kenga who are her daughters.
18. Regarding Dhahabu Lawrence's share who died without leaving any direct beneficiary, counsel submitted that her share should be shared equally amongst all the beneficiaries of the estate herein



namely; Nyale Marupia, Jessica Ngombo on behalf of her husband Samuel Ngombo Marupia, Nyevu Kenga and Tabu Kenga, Nyevu Kahindi, and Kanze Kazungu Karisa. That the said one acre be availed for sale to take care of the succession and distribution process.

19. I have considered the application herein, responses thereto and submissions by both counsel. It is clear from the application and the consent order that the only administrator to the estate has since died. By consent dated March 22, 2021 and filed on April 12, 2021 which was adopted as an order of the court, Kanze Kazungu Karisa and Nyale Marupia were proposed as joint administrators. Pursuant to the court's discretionary powers conferred under section 66 of the *Law of Succession* in the appointment of legal or personal representatives of the estate, and considering that the grant has been rendered inoperative and useless in accordance with section 76(e), a grant of letters of administration de bonis non be and is hereby issued to the two proposed administrators Jessica Mbeyu Mwabeyu and Nyale Marupia Ngombo as joint administrators of the estate herein. See *Estate In re Estate of Rolf Rainer Schmid (deceased)*(2017)eKLR where the court stated;

“Essentially, upon the death of the executrix herein before completion of the administration of the estate, the next course of action should be to apply to the court for a grant of representation de bonis non limited to completion of the administration of the estate”

20. As regards the share of Dhahabu Lawrence Mapema who died intestate, this is a distinct and identifiable share to which if she were survived by direct beneficiaries, it would automatically devolve to those shares. In the absence of Dhahabu's direct heirs, the court will be guided by the law of succession section 39 of the *Law of Succession* which provides;

“(1) where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order or priority;

- (a) Father, or if dead;
- (b) Mother, or if dead;
- (c) Brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; if none;
- (d) Half-brothers and half-sisters, and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none;
- (e) The relatives who are in the nearest degree of consanguinity up to and including the sixth degree in equal shares.

21. The plain reading of the above quoted Section is that, in view of Dhahabu Lawrence's death and in the absence of a spouse, child or parents, her estate (share) shall be shared amongst her surviving brothers and sisters in equal shares in their absence their children. To that extent, no sister nor brother can claim exclusive right or privilege to take the share of Dhahabu to the exclusion of the other beneficiaries of equal ranking.

22. Accordingly, it is my finding that Dhahabu's share (1 acre) shall be shared out equally amongst the brothers and sisters or their children namely;
- a. Nyale Marupia Ngombo
 - b. Jessica Ngombo Marupia



- c. Kanze Kazungu Karisa
- d. Nyevu Kahindi Ndungo
- e. Estate of Mbodze Kenga Vumbi represented by her children Nyevu Kenga and Tabu Kenga in equal share.

Alternatively, parties can agree to sell the one acre and share proceeds equally.

- 23. As regards the portion of a burial site, it is too late to make such decision at this stage. Each beneficiary shall create his or her burial site on his or her share. Concerning, expenses incurred in prosecuting this succession case, it is too late to make such provision at this stage. However, each beneficiary shall take care of her or his expenses in excising his or her share from the main portion.
- 24. Concerning the land sold to Brosdos, it was admitted by Jessica in her replying affidavit that, it was one acre out of her portion and that of Nyale hence that is a private arrangement which should not encroach to the portion of the other beneficiaries' share. As to fresh distribution, there is no prayer to that effect nor is it part of the aforesaid consent order. For avoidance of doubt, in the event that Brosdos the alleged purchaser has been sold a portion belonging to other beneficiaries other than the portion belonging to Jessica and Nyale, he shall forthwith stop any developments being carried thereon and relocate to the portion belonging to the sellers in this case Nyale and Jessica.
- 25. Having held as above and taking into account the consent order recorded herein, the following order shall abide;
 - a. That a grant of letters of administration issued herein to Dhahabu Lawrence Mapema on July 24, 2015 be and is hereby revoked pursuant to section 76 (e) of the *Law of Succession Act*.
 - b. That a grant of letters of administration debonis non shall issue to Kanze Kazungu Karisa and Nyale Marupia Mgombo jointly.
 - c. That the Land Registrar Kilifi be and is hereby ordered to cancel and re-issue title deeds in respect of Plot No. Kilifi/Mtwapa/6518 to Nyale Marupia Ngombo and Plot No Kilifi/ Mtwapa/6517 to Jessica Ngombo Marupia
 - d. Title deed in respect of L.R No Kilifi/Mtwapa/6516 be cancelled and fresh title deeds do issue after the following fresh sub-subdivisions have been done as follows;
 - (a) Kanze Kazungu Karisa – 1 acre
 - (b) Nyevu Kahindi Ndungo – 1 acre
 - (c) Estate of Mbodze Kenga Vumbi represented by her heirs namely; Nyevu Kenga and Tabu Kenga-1 acre jointly as tenants in common (in equal share).
 - (d) The remaining 1 acre out of the said portion be shared equally amongst;
 - (e) Nyale Marupia Ngombo, estate of Samuel Ngombo Marupia represented by Jessica Ngombo Marupia, Kanze Kazungu Karisa, estate of Mbodze Kenga Vumbi represented by Nyevu Kenga and Tabu Kenga in equal shares and in the alternative the same be sold and proceeds equally shared amongst the said beneficiaries.
 - (f) Every beneficiary shall take care of his or her costs of sub-division to facilitate transfer of his or her share into his /her name.
 - (g) Each party to bear own costs.



(h) The certificate of confirmation be amended to reflect the above changes

DATED, SIGNED DELIVERED VIRTUALLY AT MOMBASA THIS 30TH DAY OF JUNE, 2021

J. N. ONYIEGO

JUDGE

