

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 375 OF 2011

IN THE MATTER OF THE ESTATE OF PETER KONGONI MULUPI (DECEASED)

RULING

1. On 20th November 2020, I delivered a judgment, wherein I postponed distribution of the estate herein, pending further disclosures by the administrators of all the members of the family of the deceased, and of all the assets of the estate. There has been some compliance, for I have affidavits on record filed by the administrators, disclosing members of the family of the deceased, the assets of the estate and proposing distribution.

2. From that record, it emerges that the deceased had married three times. His wives were Rabbecca Nanyama Kongoni, Elena Oyundo Mulupi and Susan Ayera Kongoni. All three wives are deceased, but they all had children. The children of the 1st wife, Rabbecca Nanyama Kongoni, are the late John Manyali Kongoni, Alice Meta Kongoni, Veronica Chimoso Kongoni and Kennedy Wekulo Mulupi. The children of the 2nd wife, Eliana Oyundo Mulupi, are Francis Mumia Peter, Kutondo Peter and Janet Kongoni. The children of the 3rd wife, Susan Wayera Kongoni, are the late Reuben Jomo Masava Kongoni, the late Naomi Kwamang'alia Kongoni, Chebuyi Kongoni, Khaikwa Kongoni, Flora Mutenyo Kongoni, Veronica Wechuli Kongoni and the late Zablon Injendi Kongoni.

3. The deceased is said to have had owned North Kabras/Malava/146, North Kabras/Malava/1694, North Kabras/Malava/1696 and Plot No. 1 Butali. North Kabras/Malava/146 was awarded to the 2nd house in court proceedings that were conducted in Butali DMCLC No. 3 of 1969, vide a judgment that was delivered on 17th July 1969. North Kabras/Malava/1694 was subdivided into 8 portions, being North Kabras/Malava/2927, 2928, 2929, 2930, 2931, 2932, 2933 and 2934. North Kabras/2927 was transferred to Susan Wayela Kongoni and Chebuyi Mulupi, and was later transferred to the sole name of Chebuyi Mulupi. North Kabras/Malava/2930 was subdivided into North Kabras/Malava/3401 and 3402. North Kabras/Malava/3402 was sold and transferred to the name of Nicholas Lusiola Chisala, while the status of North Kabras/Malava/3401 is a little unclear, it is alleged to have been sold to Ann Khavera Muchika, but it would appear that it is still in the name of the deceased. North Kabras/Malava/2930 was transferred to the name of the John Mulupi Kongoni. North Kabras/Malava/2933 was transferred to the name of Chebuyi Kongoni. That would then mean that the titles that are still in the name of the deceased, and, therefore, available for distribution, from the original North Kabras/Malava/1694, are North Kabras/Malava/2928, 2931, 2932, 2934 and 3401. North Kabras/Malava/1696 was said to have been sold in 1972 to the late Charles Luvembe Chibuyi, and was being utilized by his family. Plot No. 1 Butali is said to have been held in trust by the deceased on behalf of his brothers, who subsequently sold it to Chebuyi Mulupi, a claim contested by some of the parties.

4. In terms of documents, which support the position as to who owned what as between the deceased and other parties, I have had sight of some. There are copies of the proceedings and judgement in Butali DMCLC No. 3 of 1969, which show that the 2nd house was awarded North Kabras/Malava/146 by the court. I have also seen copies of the title deeds for Kakamega/Malava/2927 and 2933, dated 8th June 2011 and 10th September 2008, respectively, which show that the two properties are in the name of Chebuyi Kongoni. I have also seen copy of the title deed for North Kabras/Malava/3402, dated 22nd May 2008, which is in the name of Nicholas Lusiola Zisala. There is also copy of a green card for Kakamega/Malava/2927 showing a transfer from the deceased on 19th June 2008 to Susan Wayela Kongoni and Chibuyi Kongoni and another for Kakamega/Malava/2933 showing a transfer from the deceased to Chebuyi Kongoni on 10th September 2008. There is an official search certificate in respect of North Kabras/Malava/2930, dated 27th July 2017, which depicts the proprietor of the property as John M. Mulupi, as from 15th June 2010. There are handwritten document date 4th June 2008, being a sale agreement between the deceased and Annah Khavere Muchikah, in respect of North Kabras/Malava/3401. There is a copy of a transfer document with relation to Kakamega/Malava/2932 in favour of Kennedy Wekulo Mulupi. There is a certificates of official searches, dated 4th April 2011, showing that Kakamega/Malava/2928 and 2932, were registered in the name of the deceased on 20th January 2004. There is a copy of a document dated 11th March 2001, being an agreement of sale of Plot No. 1 Butali, between the deceased, Sayia Mulupi, Shitanda Mulupi and Japheth Mulupi, on one part, and Emmanuel Chebuyi Mulupi, on the other. There is then a document dated 6th July 2001, depicting a transfer of the said plot to Chebuyi Kongoni. That would mean that there are no ownership documents relating to North Kabras/Malava/1696, 2929, 2931, 2934 and 3401. I cannot tell, therefore, under whose names these assets are registered.

5. The estate herein comprises of registered parcels of land. Records relating to these parcels of land are held by the Ministry of Lands. Administrators have an obligation to procure the relevant documentation for the said ministry and place them before the court as evidence that those parcels exist, and are in the names of the deceased. A court should not proceed to distribute an estate blindly, without information. It should not be the responsibility of the court to look for that information. It is the duty of the administrators who are asking the court to distribute the assets.

6. As it is, without those documents, I am unable to complete distribution of the estate. I am unable to determine who benefited from *inter vivos* gifts and who did not, and I cannot tell which of the assets are available for distribution. I once again postpone confirmation of the grant, until the administrators place before me evidence of ownership of North Kabras/Malava/1696, 2929, 2931, 2934 and 3401. The parties shall move the court once they are ready with the information. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 6TH DAY OF AUGUST, 2021.

W. MUSYOKA

JUDGE