



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

SUCCESSION CAUSE NO. 67 OF 2016

IN THE MATTER OF ESTATE OF LATE KIRANDI OLE MATURA (DECEASED)

JOSHUA SAYO OLE KIRANTI.....1ST APPLICANT

MOSES MESENKA MATURA.....2ND APPLICANT

VERSUS

JEREMIAH OLE MATURA NKOITIKO.....1ST RESPONDENT

MICHAEL OLE KIRANTI.....2ND RESPONDENT

RULING

1. The applicants took out summons dated 23rd October 2020 for review of the mode of distribution of the deceased's estate in the grant confirmed on 17th February 2020 and adopt a distribution in terms houses. They also want parcel Nos. **Kajiado/Kipeto/1and Kajiado/Kipeto/xxx** to be consolidated into one parcel for ease of distribution.

2. The summon is based on the grounds appearing on its face and the affidavit by Moses Mesenka Matura, sworn on 23rd October 2020. The grounds in support of the summons are that the Administrators have been unable to give effect to the certificate of confirmation which inadvertently omitted provision for other utilities hence the desire for review the mode of distribution.

3. They also state that the confirmed grant was not supported by the surveyor's sketch map; that the mode of distribution did not take into account 35 acres which beneficiaries had set aside for schools and other public utilities, including a bore hole that has been drilled on the property and that the distribution did not make provision for access roads. According to the applicants, the cost of sub-dividing the land into smaller units is exorbitant and the estate had not foreseen such costs.

4. In the supporting affidavit, the deponent reiterated their grounds on the face of the motion as justifying the review of the certificate of confirmation of grant. He maintained that since the beneficiaries subscribe to pastoralist lifestyle, it is imprudent to sub-divide the estate into smaller units which would render the subdivisions uneconomical.

5. The 1st respondent who is a co-administrator with the 1st applicant, filed a replying affidavit worn on 1st February 2021. He maintained that the application is frivolous and an abuse of the court process and that the applicants had made unsubstantiated allegations. He denied the applicants' claim that the family had had meetings and any minutes purporting to show that such meetings took place are not true. He maintained that this court cannot direct consolidation of two or more parcels of land since that is a remit for another court.

6. According to the 1st respondent, the applicants fully participated in the process of obtaining the grant of administration and its confirmation and, therefore, the surveyor should draw the sketch map for the parcels to reflect the mode of distribution in the certificate of confirmation.

7. When the summons came up for hearing, Mr. Kamwaro, counsel for the applicants, moved the summons and urged the court to allow it and review the mode of distribution. He relied on the affidavit in support of the summons and the grounds on the face of the summons. He urged that the summons be allowed in the interest of justice.

8. Mr. Ochieng, counsel for the respondents, opposed the summons and also relied on the replying affidavit by the 1st respondent. According to counsel, the application if allowed, would take parties back to where they started. He argued that all beneficiaries agreed on the mode of distribution and filed a supplementary affidavit on the agreed mode, leading to confirmation of the grant so that the estate was distributed equally among all beneficiaries. He therefore urged that the summons be dismissed.

9. I have considered the summons for review, the supporting affidavit and the response thereto. I have also considered the submissions by counsel for the parties and all material placed before this court.

10. The summons seeks to review the certificate of confirmation dated 17th February 2020 primarily on the mode of distribution. There is no dispute that the court confirmed the grant of representation to the deceased's estate that was issued on 16th June 2016. This was after parties filed a supplementary affidavit on the agreed mode of distribution so that the estate was to be shared equally among all the beneficiaries, and a certificate of confirmation was issued to that effect. The applicants now want that mode reviewed and the certificate set aside. In place, therefore, they want the estate to be distributed according to houses. They also want two properties consolidated into one for ease of distribution.

11. The respondents have opposed the application. They argue that it is not merited and will take the beneficiaries back to where they began. They also argue that there were no meetings as the applicants allege regarding the proposed new mode of distribution. They maintained that all beneficiaries had agreed on the mode of distribution prior to the grant of representation being confirmed and there is no reason for revisiting the issue.

12. The applicants assert that all beneficiaries met and agreed on the issue of redistribution of the estate according to houses. This is, however, disputed by the respondents. According to the respondents, there was no family meeting or agreement on the issue and nothing had changed regarding the mode of distribution of the deceased's estate.

13. As I have already stated, the grant of representation intestate was confirmed on 20th February 2020 after the beneficiaries had agreed on the mode of distribution of the estate. The administrators who include the 1st applicant and the 1st respondent, filed a supplementary affidavit filed in court on 17th February 2020 giving the mode of distribution. The beneficiaries signed a consent on the mode of distribution and were in court when the summons for confirmation was heard. They were represented by counsel who also confirmed to court that the beneficiaries had agreed on the mode of distribution before the court confirmed the grant and issued a certificate of confirmation. The applicants are not, therefore, candid that the family has agreed to review the mode of distribution from equal sharing to shares according to houses.

14. The applicants have also argued that the distribution of the estate into small parcels is uneconomical given that the beneficiaries practice pastoralist way of life. The applicants' argument, though attractive, is not a legal argument.

15. Article 27 decrees that all persons are equal before the law and have the right to equal protection and benefit of the law. The equality referred to here, includes the equal enjoyment of all rights and fundamental freedoms. Both men and women have the right to equal treatment, including the right to equal opportunities. In that regard, therefore, equal distribution of the estate was within the constitutional premise even if parties had not agreed on the mode of distribution.

16. Luckily, however, the beneficiaries decided on how to distribute the estate and, therefore, no one, not even the court, could stand in their way. If the applicants have a different view or have come up with a different mode of distribution, they must engage and persuade all other beneficiaries to agree with them but cannot impose their will or view on the other beneficiaries. It must be by consensus and not coercion. The court having confirmed the grant as the beneficiaries wished, the cause was concluded and dusted. It cannot be reopened at the applicants' whims and on flimsy grounds that have no legal basis.

17. In the circumstances, having considered the summons, the response and submissions made on behalf of the parties, I find it without merit and is dismissed. No order as to costs.

DATED, SIGNED AND DELIVERED AT KAJIADO THIS 24TH SEPTEMBER OF 2021.

E. C. MWITA

JUDGE