



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**SUCCESSION CAUSE NO. 94 OF 2010**

**IN THE MATTER OF THE ESTATE OF ZEPHANIA ARONI ONYONI (DECEASED)**

SAMWEL OKINYI ARONI .....1<sup>ST</sup> PETITIONER

PHILEMON OMWEGA ARONI.....2<sup>ND</sup> PETITIONER

JOSEPH ONYONI ARONI..... 3<sup>RD</sup> PETITIONER

VERSUS

SOSPETER OCHIENGO ARONI..... OBJECTOR

**RULING**

1. Pursuant to orders of this court made on 1<sup>st</sup> November 2018 and 27<sup>th</sup> November 2018, the Senior Land Registrar, Nyamira County proceeded to land parcel no. WEST MUGIRANGO SCHEME/BOSAMARO EAST/504 and prepared a report dated 2<sup>nd</sup> May 2019, detailing the occupation of the land by some of the deceased's beneficiaries. The report was supplied to all parties pending the court's further directions.

2. The matter was mentioned before me on 5<sup>th</sup> July 2019. Mr. Nyambati, who had just come on record for the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners complained that the Land Registrar had proceeded to the site in the absence of some of the beneficiaries. He submitted that since the deceased properties had been registered in the names of the administrators as per the confirmed grant, this court had become *functus officio*. He pointed out that no application for revocation of grant was pending before the court and asked that they be left to resolve the matter as a family. He referred the court to **Section 13** of the **Environment and Land Court Act** and submitted that only the Environment and Land Court and magistrates' courts had the jurisdiction to determine land issues. He therefore urged the court to let the parties pursue any issues they may have before the Environment and Land Court.

3. Opposing the submissions, Mr. Kerosi, counsel for the 1<sup>st</sup> petitioner submitted that the grant was erroneous and the Environment and Land Court would not be seized with the requisite jurisdiction to handle issues relating to the revocation of the grant. According to counsel, the 2<sup>nd</sup> petitioner is a vexatious litigant hell-bent on bringing frivolous applications. He decried the oral submissions made by opposing counsel as an ambush and submitted that a substantive application should have been made to enable him respond. He urged the court to give directions to finalize the process of the distribution of the estate.

4. This court is now required to determine whether it has jurisdiction to give further directions on the matter. As held in the case of **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1**

*"Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."*

5. The jurisdiction in succession matters is defined in **section 47** of the **Law of Succession Act** as follows;

*47. The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:*

6. To determine this issue, a review of the background of this matter is necessary.

7. **Samuel Okinyi Aroni, Philemon Omwega Aroni and Joseph Onyoni Aroni** applied for grant of letters of administration in the estate of their deceased father **Zephania Aroni Onyoni** who died intestate on 25<sup>th</sup> July 1997. The grant was issued on 20<sup>th</sup> July 2010 and confirmed

on 17<sup>th</sup> June 2011. The confirmed grant indicated that all the deceased's properties were to be registered in the joint names of the administrators to hold in trust for all other beneficiaries. The following properties were listed as the deceased's assets;

**1. West Mugirango Scheme/Bosamaro East Plot No. 504**

**2. Commercial plot at Mosobeti Market plot No. 20**

**3. West Mugirango Scheme/ Mosamaro West plot No. 1053**

8. Afterwards, one of the deceased's sons, **Sospeter Ochengo Aroni**, who had been left out of the schedule of beneficiaries, filed an application for revocation of the grant on 30<sup>th</sup> June 2011. That application came up for hearing before Hon. Wakiaga J. on 11<sup>th</sup> March 2015 and a consent order was recorded in the following terms;

*“By consent, the Summons for revocation of grant dated 30/6/2011 be and hereby marked as compromised on the following terms;*

1. *The name of the Objector/applicant be included in the schedule of beneficiaries of the deceased.*
2. *The petitioners and the objector do file either joint or separate schedule of distribution in respect of the estate of the deceased within 30 days to facilitate the finalization of the issue of distribution.*
3. *Either of the parties to be at liberty to apply for confirmation*
4. *Each party to pay their costs.”*

9. On 15<sup>th</sup> October, 2018, the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners filed summons for provision of security dated 13<sup>th</sup> August 2018, supported by the 2<sup>nd</sup> petitioner's affidavit sworn on the same day. He averred that the administrators had caused the assets of the deceased to be transferred and registered into their names and had engaged the services of a surveyor to undertake the sub-division of the assets of the deceased equally amongst the beneficiaries. He deposed that during the process, the 1<sup>st</sup> petitioner had become violent and had threatened to kill his co-petitioners in the event that the intended sub-division was to proceed. Despite the 1<sup>st</sup> petitioner's conduct, the rest of the beneficiaries were keen on having the estate sub-divided and transferred to the respective beneficiaries. He urged the court to grant the orders sought as failure to do so would negate the conclusion of the matter.

10. The above application was heard and the following orders made on 1<sup>st</sup> November, 2018;

*“In order to finalise administration of the estate, the Assistant County Commissioner in charge of Bosamaro East and West locations together with the County Surveyor Nyamira County to proceed with all the administrators to subdivide the property **L.R No. West Mugirango/ Bosamaro/504, L.R No. West Mugirango/ Bosamaro West/1053 and Plot Number 20, Mosobeti Market** amongst all beneficiaries in accordance with the Certificate of Confirmation issued by this court taking into account where each party has settled. A report to be lodged in court within 60 days.”*

11. The 1<sup>st</sup> petitioner believing the presence of the County Land Registrar necessary to actualize the court's orders of 1<sup>st</sup> November 2018, filed summons dated 26<sup>th</sup> November 2018 for his inclusion. The application was heard *ex-parte* and granted *ex debito justitiae* in the following terms;

*Summons dated 26/11/2018 is allowed to the extent that the order dated 01.11.2018 shall include, “**THAT** the County Land Registrar is directed to assist and ensure compliance with the aforesaid order.”*

12. The 2<sup>nd</sup> and 3<sup>rd</sup> petitioners then filed a further summons dated 31<sup>st</sup> January 2019 seeking *inter alia* an interpretation of the schedule of distribution in the Certificate of Confirmation of Grant. They sought orders that the distribution be carried out in a manner taking into account where each party had occupied or settled. They also asked the court to direct the O.C.P.D Nyamira Police Division or the O.C.S Nyamira police station or such other officers to provide reasonable security to the Land Registrar, the County Surveyor Nyamira County and the Assistant County Commissioner in-charge of Bosamaro East/West locations to facilitate the implementation of the scheme of distribution pursuant to the confirmed grant.

13. Before the court could give further directions on the application dated 31<sup>st</sup> January, 2019, it directed that letters addressed to the court by the Assistant County Commissioner dated 11<sup>th</sup> February 2019 and 6<sup>th</sup> February 2019 be supplied to the beneficiaries. In those letters, the Assistant County Commissioner expressed her team's readiness to implement the orders of the court of 1<sup>st</sup> November 2018 but lamented that it had become apparent, from a meeting held on 6<sup>th</sup> February 2019 that the administrators of the estate could not agree on the mode of distribution. She requested for further directions on how to undertake the exercise.

14. Considering all these issues, the court on 25<sup>th</sup> February, 2019 directed the Nyamira Assistant County Commissioner, County Surveyor and County Land Registrar or their nominees to proceed to land parcel no. **West Mugirango Scheme/Bosamaro East/504** and identify the portions settled on by each beneficiary on the said property and provide the court with a sketch plan and area of each plot or subdivision for the beneficiaries. All the parties were required to share the costs of the survey and sub-division of the properties equally. Additionally, the County Police Commander, Nyamira through his officers was directed to provide security to ensure that the exercise was completed in time. The Senior Land Registrar, Nyamira County visited Land Parcel No. **West Mugirango Scheme / Bosamaro East / 504** and conducted a

survey giving rise to the impugned report dated 2<sup>nd</sup> May 2019.

15. My interpretation of the court's orders of 25<sup>th</sup> February, 2019 is that the court allowed the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners' application dated 31<sup>st</sup> January 2019, in terms of land parcel No. **West Mugirango Scheme/Bosamaro East/504**. The record shows that out of all the properties listed as the deceased's properties this was only property the administrators have so far been able to transmit into their names in accordance with the confirmed grant.

16. **Section 83** of the **Law of Succession Act** lists the duties of the personal representatives as follows:

(a) *to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;*

(b) *to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;*

(c) *to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);*

(d) *to ascertain and pay, out of the estate of the deceased, all his debts;*

(e) *within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;*

(f) *subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income there from, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;*

(g) *within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.*

(h) *to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;*

(i) *to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration. [Emphasis added]*

17. The chief function of the Succession Court is to ensure the estate of the deceased is distributed to all rightful heirs. The court is given wide powers under **section 47** reproduced above to ensure this happens. **Rule 73** of the **Probate and Administration Rules** pronounces the court's inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

18. Additionally, **section 76** of the **Law of Succession Act** provides that the court may of its own motion revoke or annul a grant if it decides that:

(d) *that the person to whom the grant was made has failed, after due notice and without reasonable cause either –*

(ii) *to proceed diligently with the administration of the estate; or*

(iii) *to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false.*

19. With the above provisions of the law in mind, I observe that the grant in this matter was confirmed way back in 17<sup>th</sup> June 2011. Nearly 5 years later, none of the deceased's properties have been distributed to the beneficiaries by the administrators of his estate. The administrators have within that period embarked on making numerous applications all of which have been disposed of. The main duty of the administrators of the deceased's estate as stipulated in Section 83 of the Act, is to bring in all the assets of the deceased and distribute the estate equitably to **ALL** the beneficiaries of the estate unless they expressly denounce their right to a share of the estate.

20. The 2<sup>nd</sup> and 3<sup>rd</sup> petitioners had made an application to this court dated 31<sup>st</sup> January 2019 which was substantially allowed by the court on 25<sup>th</sup> February 2019. If the submissions of their counsel are anything to go by, the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners are not keen on further prosecution of that application and have expressed the desire to resolve the matter amicably.

21. I am mindful that **Article 159** of the **Constitution** provides that the court is required to promote alternative modes of dispute resolution. The Court is also required to ensure that justice is not delayed and is done to all irrespective of their status such as gender or marital status.

22. Taking all the above into account the administrators of the deceased estate, being **Samuel Okinyi Aroni, Philemon Omwega Aroni and Joseph Onyoni Aroni** are hereby directed to complete the administration of the estate of the deceased and to produce to the court a full and

accurate account of the completed administration. Any interested party may file an application for a full and accurate account of the completed administration within 6 months hereof.

**Dated, signed and delivered** at Kisii this **26<sup>th</sup>** day of **July 2019**.

**R.E.OUGO**

**JUDGE**

**In the presence;**

**Mr. Nyambati**                      **For the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners**

**Mr. Kerosi**                        **For the 1<sup>st</sup> Petitioner & Objector**

**Ms. Rael**                            **Court Clerk**