



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO.107 OF 2008**  
**IN THE MATTER OF THE ESTATE OF LEYIAN OLE KIRONUA**

**JOHN MWANGI NDUATI.....PETITIONER**

**VERSUS**

**THE ESTATE OF LEYIAN OLE KIRONUA .....RESPONDENT**

**AND**

**LENKAI OLE LEYIAN .....1<sup>ST</sup> INTERESTED PARTY**

**RULING OF THE COURT**

1. The Application before me is a Notice of Motion dated 16/09/2016 expressed to be brought under Articles 22, 23 and 165 (3) (b) of the Constitution of Kenya (Protection and Fundamental Freedoms) Practice and Procedure Rules 2013 Section 80 of the Law of Succession Act, Order 51 Rule 1 of the Civil Procedure Rules and all enabling Provisions of the law. It seeks the following reliefs:-

***1. That this court be pleased to grant leave to the Applicant to be enjoined as a party to these proceedings.***

***2. That this court be pleased to grant leave to the Applicant to take part in these proceedings for purposes of transferring and registering the plots emanating from the subdivision and sale of all that property known as KIMANA TIKONDO/36.***

***3. THAT this court be pleased to order the Administrator of the Estate of LEYIAN OLE KIRONUA to have the property known as KIMANA –TIKONDO/36 subdivided and the two plots sold by LENKAI OLE LEYIANI to JOHN MWANGI NDUATI be hereby transferred and registered in the name of the Applicant herein.***

***4. That this court be pleased to order the Administrator of the estate of Leyian Ole Kironua to give the progress of the distribution of the estate so far.***

***5. That the costs of the Application be provided for.***

2. The Application is supported by the annexed affidavit of the Applicant sworn on even date and further on the following grounds namely:-

*a. That Leyian Ole Kironua was originally the registered proprietor of all that piece of land known as KIMANA-TIKONDO/36.*

*b. That Mr. Leyian Ole Kironua was survived by several dependants upon his death.*

*c. That, sometime in the year 2008 one of his sons by the name of JACOB PARMETEU OLE LEYAIN made an Application for and was granted letters of administration intestate in Succession Cause No.107 of 2008 in the High Court at Machakos.*

*d. That during the pendency of the letters of administration intestate issued to Jacob Parmeteu Ole Leyian, one of the beneficiaries LENKAI OLE LEYIAN sold two plots to John Mwangi Nduati the Applicant herein.*

*e. That the sale by Lenkai Ole Leyian was consented to by the Administrator of the estate and the wife of the vendor. The Agreement for sale of the two plots was agreed and executed by the parties, while awaiting the official distribution by the court.*

*f. The above purchases by the Applicant herein were made in good faith and without notice of any encumbrances, letters and or interest whatsoever affecting the same and after conducting official searches and due diligence on the said titles.*

*g. That despite the many verbal assurances by the administrator of the estate and vendor that the transfer and registration will be done the estate has never been distributed to date without any justifiable reason.*

*h. That the continued non-compliance with the express Provisions of the agreements for sale is in bad faith and ought to be rectified by this Honourable court.*

*i. That the Application has been brought expeditiously and without undue delay.*

*j. That this Honourable court has inherent jurisdiction to grant the orders sought.*

3. The Applicant's case is that he had purchased two plots from part of property belonging to the estate of Leyian Ole Kironua namely **LOITOKITOK/KIMANA-TIKONDI/36** from one of the beneficiaries by the name of Nenkai Ole Leyian but the same has not been transferred to him as a result of the refusal by the Administrator Jacob Parmeteu Ole Leyian. The Applicant contents that the conduct of the Administrator warrants this court to compel him to be compelled to give the progress of the distribution of the estate so far and so as to enable the Applicant obtain legal ownership of the two plots he had purchased from one of the beneficiaries.

4. The Administrator and one of the beneficiaries who had sold a portion of land to the Applicant were duly served with the Applicant's Application but the two failed and or neglected to file any grounds of opposition or replying affidavits.

5. I have considered the Applicant's Application together with the Affidavit and annexures in support as well as the grounds thereof. It is not in dispute that the grant of administration intestate was issued to the administrator Jacob Parmeteu ole Leyian on the 28/05/2009 and a certificate of Confirmation of Grant was issued on the 11/3/2009 and the Administrator was to hold the properties of the estate for himself and on behalf of all the beneficiaries. It is also not in dispute that the Administrator herein later caused himself to be registered as proprietor by transmission of all the properties of the deceased which properties included parcel number **Loitokitok/Kimana-Tikondo/36**. It is also not in dispute that one of the beneficiaries Lenkai Ole Leyian sold two plots of land contained in **Loitoktok/Kimana – Tikondo/36** to the Applicant herein. It is also not in dispute that the Administrator has not commenced the distribution of the estate so as to enable the beneficiaries have quiet enjoyment of their respective portions of land. It is also not in dispute that upon the issuance of grant of letters of administration intestate, the Administrator herein was duly bound to faithfully administer the estate of the late Leyian Ole Kironua

according to law and to render a just and true account thereof whenever required by law so to do.

6. Having established the above issues to be not in dispute, I find the remaining issues for determination are as follows:-

*i. Whether the Applicant has established sufficient grounds to be enjoined into these proceedings.*

*ii. Whether the Administrator of the estate of Leyian Ole Kironua should be ordered to render an account as regards the administration of the estate.*

7. As regards the first issue, the Applicant has shown that indeed he had bought two parcels of land from one of the beneficiaries Lenkai Ole Leyian. Copies of the sale agreements have been shown. The Applicant has averred that he has developed the said two plots and resides thereon. I have perused the two sale agreements and note that the Administrator herein Jacob Parmeteu Leyian witnessed the same and therefore this lends credence to the Applicant's claim that the Administrator is fully aware of the Applicant's presence and interest. The Administrator having consented to the sale agreement is thus bound to factor the Applicant's interest during the sub-division of parcel **Loitoktok/Kimana – Tikondo/36**. The Administrator upon obtaining the grant and upon registering himself as proprietor is under obligation to distribute the estate to all the beneficiaries who shall in turn transfer ownership of the two plots to the Applicant. Hence I find the Applicant has shown that he has a legitimate interest in the estate to the extent that he could even seek to apply for revocation of the confirmed grant if the Administrator fails to administer the estate according to law. Consequently, I find the Applicant has established sufficient grounds to be enjoined into these proceedings so as to enable him agitate his interest in the estate of the deceased herein.

8. As regards the second issue, the Administrator upon being issued with the grant on the 28<sup>th</sup> May 2008 was under obligations to faithfully administer the estate and to render a just and true account thereof whenever required by law so to do. The Administrator was not supposed to just obtain the Certificate of Confirmation of grant and go to sleep. He was expected to go and administer the estate and to ensure that all the beneficiaries have obtained their rightful shares. The Administrator held the properties for himself and on behalf of the beneficiaries. Already he has had himself registered as proprietor of one of the parcels herein **Loitokitok/Kimana – Tikondo/36** by way of transmission and this was on 26<sup>th</sup> September 2013. It is now four years down the line and he has done nothing towards the distribution of the estate such as commencing the process of subdivision so that the beneficiaries obtain their rightful portions. It must be pointed out that the Administrator's duties are not over yet since his responsibility is still binding until the distribution of the estate is finalized and all the beneficiaries issues addressed and to come back to court if required to confirm that he has discharged his responsibilities. The Applicant herein has stated that the Administrator has been reluctant to hasten the subdivision of the parcel of land so that he is able to obtain full ownership of the portions that he had bought from one of the beneficiaries Lenkai Ole Leyian. This is despite the fact that the Administrator had consented to the sale and even witnessed by signing the same. I find the Administrator's conduct rather capricious and that even the other beneficiaries are expected to have obtained their rightful shares by now and that there is a likelihood of danger, now that the Administrator has already registered himself as proprietor of the parcel of land and due to the prolonged delay to distribute the estate, this court must step in and call him to order and to remind him of his obligations as Administrator. During the initial filing of this Petition and upto the time of receipt of grant, the Administrator had undertaken to faithfully administer the estate according to law and to render a just and true account thereof whenever called upon by law so to do. It has now become imperative that the Administrator be called upon to give the progress of the distribution of the estate so far. Hence the second issue is merited. Under Rule 73 of the Probate and Administration Rules nothing shall limit the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. It is in this regard that the Applicant's Application is found to have merit.

9. In the result the Applicant's Application dated 16/09/2016 is allowed in terms of prayers 2, 3, 4 and 5. The Administrator herein Jacob Ole Parmeteu Leyian is ordered to distribute the estate of the deceased

within the next ninety (90) days failing which the Applicant shall be at liberty to move this court for revocation of certificate of Confirmation of Grant. The costs shall be in the cause.

It is so ordered.

Dated, signed and delivered at Machakos this 22ND day of MAY 2017.

**D. K. KEMEI**

**JUDGE**

**In the presence of:-**

C/A: Kituva .....