



In re Estate of Kibowen Komen (Deceased) (Succession Cause 500 of 1997) [2025] KEHC 554 (KLR) (17 January 2025) (Ruling)

Neutral citation: [2025] KEHC 554 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 500 OF 1997
SM MOHOCHI, J
JANUARY 17, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE KIBOWEN KOMEN (DECEASED)

BETWEEN

MICAH BOWEN KOMEN APPLICANT

AND

PETER KIPRUTO KOMEN 1ST RESPONDENT

ABDULGHANI MOHAMED KOMEN 2ND RESPONDENT

ABRULKADIR MOHAMMED 3RD RESPONDENT

EVAN KIPTUI KOMEN 4TH RESPONDENT

RULING

1. Before me are two conflicting summons one for review of judgment by Micah Bowen dated 23rd July 2024 and the 2nd one by the Administrators dated 2nd September 2024, seeking that Mr. Micah Bowen and Mohammed Tanui Komen be found to be in contempt of Court together with requisite sanction, plus a rather strange prayer of cancellation of revocation of Title Deeds Numbers Nakuru Municipality Block 4/25 and L.R NO. 1331/2 (I.R 205) and the subdivision Titles (L.R NO. 148610 to 148644 - both parcels included) and issuance of an order to the District Land Registrar to issue fresh Title Deeds/Certificates of Lease for land parcel numbers I.R No. 138374 (L.R No. 10013/4).
2. In the Summons for review of judgment has been filed over 14 years since the impugned judgment and there was an obligation upon the Applicant to demonstrate that there has been no inordinate delay.
3. I have considered the following; filed written submissions together with annexed authorities dated 28th October 2024 by Gordon Ogola Advocate for Micah Bowen, filed written submissions together with annexed authorities by A. N Geke Advocate for the estate of William Komen dated 22nd October 2024, the written submissions together with annexed authorities dated 24th October 2024, by Sabaya



Advocate for Mohammed Tanui Komen, the written submissions together with annexed authorities dated 16th October 2024 by Karanja Mbugua Advocate for the 1st and 2nd Administrators.

4. Without being too academic about this, the Administrators are duty-bound to undertake transmissions into the names of the beneficiaries in this particular instance the entire gravamen of the Application for contempt by the Administrators was anchored on the failure and refusal by Mr. Micah Bowen and Mohammed Tanui Komen to surrender the original title relating to property Land Parcel No. 1331/2 (I.R. 205).
5. Mr. Micah Bowen had an opportunity when he filed Summons for review dated 6th January, 2016 to raise that issue and in fact all issues for review cannot then be heard to say this is something that has come to his attention recently, there is nothing new or novel to warrant review of judgment fifteen (15) years later.
6. This Court sees no self-evident error or ambiguity in the judgment dated 30th July 2010 warranting review.
7. The provisions of Order XLIV rule 1 stipulates that;

“any person who considers himself aggrieved, who desires to obtain a review of the decree or order, may apply for a review of judgment to the Court which passed the decree or made the order without unreasonable delay”.
8. In this case the judgment was delivered on 30th July 2010. The Applicant had previously agitated for review which opportunity he ought to have utilized to seek review of the instant issue I consider the delay of over fourteen (14) years to be inordinate, in the light of the express requirement by the rules which require that an application for review be made without any unreasonable delay.
9. In the case of Panalpina (E.A.) Ltd V Ngae (1999) LLR 2370 (HCK), Waki J. (as he then was) held as follows:

“First the question of delay. Order 44 rule 1 Civil Procedure Rules requires in peremptory language that an application for review be made “without unreasonable delay.” The order sought to be reviewed here was made on 23rd September 1998.

The application for review was filed on 16th July 1999, about 10 months later. Plenty of water had gone under the bridge in the matter, as it were, within that period. The affidavit in support of that application made no allusion to the period expired before the application was filed and did not explain it.

..... I think that it was erroneous to admit the application after an unexplained period of 10 months had expired and various developments had taken place in the matter”.
10. My understanding is that, the deceased registered the property land parcel No. 1331/2 (I.R. 205) measuring 2619 Acres in the names of his elderly sons (in trust) hence the inclusion of the same in this probate.
11. This Court concurs with Mr. Micah Bowen that no transmission is necessary property land parcel No. 1331/2 (I.R. 205) as it is already registered in the names of the beneficiaries named as such in the certificate of confirmed grant dated 31st July 2017.
12. As for the Administrators being inhibited for lack of the original title for property land parcel No. 1331/2 (I.R. 205). I am afraid the same cannot pass, if the same was to be transmitted to any other



beneficiary apart from those named in the confirmed grant, then the law would not lack where a title cannot be traced, as the Court can order dispensation with the title during transmission.

13. This Court unfortunately views the Application for contempt by the administrators to be one that seeks to settle other historic issues that may have nothing to do with the probate while on his end Mr. Micah Bowen appears to be stalling the conclusion of the probate by seeking a review after fourteen years.
14. Secondly, it is this Courts observation that the Administrators are in this particular instance regarding transmission of the property land parcel No. 1331/2 (I.R 205) engaging in an effort in futility, the subject property is already in the names of the named beneficiaries.
15. With regards to cancellation of revocation of Title Deeds Numbers Nakuru Municipality Block 4/25 and L.R NO. 1331/2 (I.R 205) and the subdivision Titles (L.R NO. 148610 to 148644 - both parcels included) and issuance of an order to the District Land Registrar to issue fresh Title Deeds/Certificates of Lease for land parcel numbers I.R No. 138374 (L.R No. 10013/4) this Court is afraid to observe that the substantive prayer was misplaced within the contempt proceedings and that the 3rd Party CK Patel Limited ought to have been enjoined as the Certificate of Official Search indicates acquired the property as from 23rd May 2012 this issue was not adequately ventilated.
16. This Court did reflect on the issue of costs and whereas both summonses were perfect candidates for issuance of adverse cost orders, however the Court shall not award costs to any party. If the Court was considering the summons separately then the costs would have been awarded to the respective victorious parties
17. I am inclined to make the following final orders;
 - i. The Summons for review of judgment dated 23rd July 2024 is res-judicata without merit and the same is dismissed.
 - ii. The Summons dated 2nd September 2024 without merit and the same is dismissed.
 - iii. There shall be no orders as to costs, parties shall bear their respective costs.

It is so Ordered.

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 17TH DAY OF JANUARY 2025.

MOHOCHI S. M.

JUDGE

