



**In re Estate of Esther Chebet Malel (Deceased) (Succession Cause
2 of 2018) [2025] KEHC 4663 (KLR) (11 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4663 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 2 OF 2018
RN NYAKUNDI, J
APRIL 11, 2025
IN THE MATTER OF THE ESTATE OF ESTHER CHEBET MALEL (DECEASED)**

BETWEEN

JAMES KARUGA APPELLANT

AND

LINDA JEROTICH 1ST RESPONDENT

JOAN JEPNGETICH MALEL 2ND RESPONDENT

ADMINISTRATORS OF THE ESTATE

RULING

1. Before me for determination is the application dated 29th August, 2024 expressed to be brought under the provisions of section 47 of the Law of Succession Act, Rule 49 of the probate and Administration Rules, Order 45 Rule 1 of the Civil Procedure Rules and sections 1A, 1B and 3A of the Civil Procedure Act. the applicant seeks reliefs to wit:
 - a. Spent
 - b. That pending the hearing and determination of this application the Honorable court be pleased to grant orders restraining the respondent by themselves, through their agents, servants or assigns from transferring, selling, charging, or in any manner whatsoever alienating land parcel L.R. No. 12390 or the consequent subdivisions.
 - c. That pending hearing and determination of this application, the honorable court be pleased to grant orders staying any or further distribution of the Estate.
 - d. That the Honorable court be pleased to review, vary and set aside its orders given on 21st January, 2020, confirming the Estate herein.



- e. That subsequent to the grant of the prayer sought at 4 above, the applicant be granted leave to file his protest to the distribution as proposed.
2. The application is anchored on grounds that:
 - a. That there is need to review and set aside the orders given as there is grave omission by the Administrators in the summons for confirmation of Grant.
 - b. That the applicant purchased 12 acres of land from the late Malel.
 - c. That the Estate of Malel was administered by Priscilla Malel (now deceased) and in turn her estate was administered by the deceased subject of this proceedings herein.
 - d. That in her administration the late Priscilla in distribution transferred 5 acres to the applicant and there is now remaining 7 acres due from the Estate of Malel.
 - e. That the estate property in this proceedings is land inherited from the late malel and as a creditor of the said Estate, the applicant is consequently a liability herein.
 - f. That the applicant as a liability to the estate, has held various discussions with the administrators herein and in principle the two acknowledged the liability but however the applicant has established that the Grant was confirmed without his interest being factored.
 - g. That therefore there is sufficient cause to review, vary and set aside the orders given confirming the grant.
 3. The parties on their own motion sought to attempt court annexed mediation which came out successful and this court shall adopt the said mediation agreement crafted in the following terms:

Full Mediation Agreement

4. We the undersigned parties to this actions have agreed to solve our disputes/differences as follows:
 - a. That the application dated 29th August, 2024 be withdrawn with costs
 - b. That the applicant shall within 60 days from the date hereof ascertain his interest on parcel L.R. No. 12390 by:
 - i. Conducting a ground visit on the said parcel of land.
 - ii. Appointing a surveyor to establish the ground status on the map of every individual in possession of the 12 acres
 - iii. Share the survey report together with his findings with the Respondents and for the avoidance of doubt, the report should capture the size, name and documentation in regards to the occupied parcel, for the purposes of agreeing on the way forward.
 - iv. The costs of the survey and he above activities shall be borne by the applicant
 - v. Parties shall thereafter be at liberty to move the court as appropriate.
5. It is so ordered.

GIVEN UNDER MY HAND AND SEAL AT ELDORET THIS 11TH DAY OF APRIL, 2025

.....

R. NYAKUNDI



JUDGE

