



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Mato Benjamin Wachiya (Deceased) (Succession Cause
15 of 2012) [2025] KEHC 4395 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4395 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 15 OF 2012**

AC BETT, J

APRIL 2, 2025

BETWEEN

TERESINAH KHAOYA MATO PETITIONER

AND

ISAAC AVOMBA MATO OBJECTOR

RULING

1. The Grant of Letters of Administration Intestate was issued to the Petitioner herein and confirmed on 3rd November 2014. On 14th June 2023, the Certificate of Confirmation of Grant was rectified at the instance of the Petitioner who was then granted 90 days to complete transmission.
2. On 28th May 2024, the parties appeared before the court which ordered that the deceased's property be subdivided in such a manner that the Objector's land abuts the main road. The subdivision was ordered to be effected within thirty (30) days with a rider that the survey fees would be paid after a report was made in court to the satisfaction of the parties.
3. When the matter came up for Mention on 29th May 2024, Mr. Munyendo for the Objector was absent although the Protestor was present. The court made an order that since the Objector had not dug an alternative shallow well for the widow and failed to pay the survey fees to give him alternative access to the road, then the Certificate of Confirmation of Grant should be implemented in terms of the survey plans already done. The court then ordered that the caution registered against the property be removed to enable transmission.
4. The Objector was aggrieved by the order of the court and filed an application dated 2nd July 2024 in which it urged the court to review and set aside or vary the orders issued on 28th May 2024 on the ground that there was an error apparent on the face of the record which error has occasioned an injustice.



5. In the affidavit in support of the application, the Objector deponed that the Petitioner did not extract and serve the order issued on 28th May 2024 and despite several requests by the Objector failed to implement the order. According to the Objector, without a re-survey, he was not in a position to dig the Petitioner a new well as he could not tell where her new boundary would reach. The Objector averred that he had approached the Petitioner severally with a request that she gets a surveyor but she remained indignant and this prompted him to take matters into his hands and extract the subject order by which time the thirty (30) days period had long lapsed.
6. I have considered the application and the parties' respective submissions. The order dated 28th May 2024 is succinct. It directed that the Certificate of Confirmation of Grant be implemented in terms of the survey plans and mutation already done within 60 days. The said was preceded by an order dated 26th February 2024 in which the court ordered that the subdivisions be amended so that the Objector's land also abuts the road. This was after a complaint by the Objector that he had been rendered landlocked and discriminated against.
7. It is evident from the record that the Petitioner took advantage of the absence of the Objector on 28th May 2024, and misled the court into issuing orders that in effect, vacated the orders dated 26th February 2024.
8. The Objector had a valid complaint and the order dated 26th February 2024 was aimed at addressing the complaint.
9. On 28th May 2024, the court made orders that were contradictory of the orders made on 26th February 2024. In the first instance, the court had not ordered the Objector to pay the survey fees. In any event, the survey fees was supposed to be paid after the survey exercise. Secondly, there is no order on record that the Objector was to dig a shallow well for the Petitioner as a pre-condition for the re-survey. There is clearly an error apparent on the face of the record.
10. The application for review is therefore merited and is allowed. The orders dated May 28, 2024 are hereby set aside and the orders dated February 26, 2024 reinstated. The Administrators are given sixty (60) days to execute the said orders dated February 26, 2024 and in default to show cause why the Grant of Letters of Administration issued should not be revoked and a new Administrator appointed.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 2ND DAY OF APRIL 2025.

A. C. BETT

JUDGE

In the presence of:

No appearance for Mr. Munyendo for Objector/Applicant

Mr. Mondia for Petitioner/Respondent

Court Assistant: Polycap

