



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Kibowen Komen (Deceased) (Succession Cause
500 of 1997) [2025] KEHC 5571 (KLR) (6 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5571 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 500 OF 1997
SM MOHOCHI, J
MAY 6, 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. Once again before me are Four (4) summons, the 1st and 2nd Applications the 1st Application is dated 17th May 2021, in which Isaac K. Towett seeks recognition of his claim for the 24 Acres sold to him in respect of parcel number LR No 1331/2 Menengai Farm by the Late William Komen during his life time. He further prays that the regional surveyor be directed to survey the same to confirm the acreage to be 24 Acres, prepare mutation and plan for the Registry Index Map (RIM) and the administrators to the estate issue him with transfer documents for the same.
2. The 2nd Summons is dated 18th May 2022 by alleged of 304 individual purchasers, led by Alexander Kenda who claim to have purchased different sizes of land from William Komen to be exercised from LR No 1331/2 Menengai Farm, where he held an equal share with his brother Micah Komen. They are seeking similar prayers of: -
 - i. Recognition of the respectful portions they bought and have been enjoying peaceful occupation, to be surveyed by the regional surveyor to confirm that what they are occupying tallies with their sale agreement.



- ii. The beneficiaries of the estate of William Komen to identify and confirm that they are the genuine purchasers and occupants.
 - iii. They then be issued with registration documents to enable them, register their respectful portions and title deeds issued to them.
3. The 3rd Summons is dated 18th October 2024 by Grace Samson Komen to vary the judgment dated 30th July, 2010 and the orders/direction issued on 13th December, 2019 sanctioning the excision and sale of 66 acres from land parcel LR 10684 by the administrators for sale to offset the known liabilities of the estate as far as the said judgment and or order relates to the sale of the said 66 acres.
 4. That upon grant of prayer above, the Court be pleased to substitute it with an Order that Grace Samson Komen should clear any ascertained liabilities/debts of the estate.
 5. That the Court be pleased to order the entity in possession of the title deed for land parcel LR 10684 to immediately and not more than 21 days from the date of the ruling surrender it to Grace Samson Komen. That then cost of the application be on then cause.
 6. The 4th Application is dated 25th January 2025 seeking an order to the effect that a provisional Title in respect of land parcel No LR No 1331/2 (I.R 205) be issued in the name of the late Kibowen Komen (deceased).
 7. That upon the issuance of the aforesaid Title the same be released to M/s Karanja Mbugua & Company Advocates.
 8. I shall not regurgitate the extensive pleadings as contained in the affidavits and further affidavits of the parties.
 9. I have considered the extensive pleadings, Affidavits, bundle of documents and authorities and various written submissions articulating various party positions leading this Court to conclude that no manifest error or ambiguity in the judgment dated 30th July 2010 warranting review.
 10. 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”.
 11. In this case the judgment was delivered on 30th July 2010. The Applicant had previously agitated for review, Appeal against the said judgment which Appeal was dismissed. I consider the delay of over fifteen (15) 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.
 12. 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 preemptory 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”.

13. 1st Application is dated 17th May 2021 is without merit for the following reasons;
 - a. Isaac K. Towett was unknown to the deceased person and the claim for the 24 Acres sold to him in respect of parcel number LR No 1331/2 MENENGAI FARM by the Late William Komen has nothing to do with the deceased.
 - b. His interest is misplaced and the best recourse would be to seek to obtain specific performance from the estate of the Late William Komen.
14. The 2nd Application dated 18th May 2022 is without merit for the following reasons;
 - a. The alleged of 304 individual purchasers, led by Alexander Kenda were unknown to the deceased.
 - b. They claim to have purchased (unspecified) different sizes of land from William Komen which claim is unproven to be exercised from LR No 1331/2 Menengai Farm.
 - c. The late William Komen is not the deceased by their own admission that they only dealt with William Komen then it is logical to pursue their interest therefrom.
15. The 3rd Application dated 18th October 2024 is without merit for the following reasons;
 - a. This Court sees no self-evident error or ambiguity in the judgment dated 30th July 2010 warranting review.
 - b. The same is res judicata by dint of the Appeal by the Applicant before the Court of Appeal and the subsequent motion for leave to Appeal from the Court of Appeal.
 - c. As at 13th December, 2019 when the Court sanctioned the excision and sale of 66 acres from land parcel LR 10684 by the administrators to offset the known liabilities of the estate the total size of the land was 666 acres and that only 150 acres was excision and distributed to beneficiaries of the deceased the Applicant and her family was to retain almost 350 acres which cannot just fizzle and disappear into thin air.
 - d. The Applicant has not demonstrated her capacity to offset all liabilities outstanding in the estate of the deceased.
16. The 4th Application dated 25th January 2025 is without merit for the following reason;
 - e. Parcel No LR No 1331/2 (I.R 205) was registered in the names of the two beneficiaries subject to the confirmed grant prior to the demise of the deceased and the prayer to have a provisional title issued in the name of the deceased post humous is preposterous at best, the deceased was never registered owner at any given date.
 - f. This Court cannot in a succession cause change ownership and title to the name of the deceased what has never been.
17. I am inclined to make the following final orders;
 - i. The Summons dated 17th May 2021 is dismissed with costs to the Respondents.



- ii. The Summons dated 18th May 2022 is dismissed with costs to the Respondents.
- iii. The Summons dated 18th October 2024 is dismissed with costs to the Respondents.
- iv. The Summons dated 25th January 2025 is dismissed with costs to the Respondents.

It is so Ordered.

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 6TH DAY OF MAY 2025.

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MOHOCHI S. M.

JUDGE

