



In re Estate of M’Nchebere Nchebere (Deceased) (Succession Cause 549 of 2004) [2024] KEHC 2917 (KLR) (14 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2917 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 549 OF 2004
TW CHERERE, J
MARCH 14, 2024**

IN THE MATTER OF THE ESTATE OF M’NCHEBERE NCHEBERE (DECEASED)

BETWEEN

JACKSON MURIUNGI M’NCHEBERE APPLICANT

AND

JONATHAN NCOORO NCHEBERE RESPONDENT

RULING

1. Jonathan Ncooro Nchebere and Jackson Muriungi M’Nchebere are the 1st and 2nd Administrators respectively of Deceased’s estate.
2. The Certificate of Confirmation of Grant was issued on 14th March, 2019 and rectified on 21st February, 2021 but to date the estate has not been distributed.
3. By summons dated 18th January, 2024, supported by an affidavit sworn on even date by Jackson Muriungi M’Nchebere (2nd Administrator/Applicant), he accuses Jonathan Ncooro Nchebere (1st Administrator/Respondent) of unlawfully withholding the original Land Control Board Consent and all other necessary transmission documents thereby delaying the transmission of the estate.
4. 2nd Administrator/Applicant therefore seeks orders that:
 1.spent
 2. This honourable court be pleased to compel the 1st Administrator/Respondent to release the original Land Control Board Consent and all other necessary transmission documents to the 2nd Administrator to finalize the distribution of deceased’s estate as per amended grant issued on 21st February, 2021 and in default the court be pleased to issue an order that a fresh Land Control Board Consent be issued to the 2nd Administrator



3. The honourable court be pleased to authorize and empower the Deputy Registrar of this court to sign all the necessary transmission documents on behalf of Jonathan Ncooro Nchebere (1st Administrator/Respondent) to cause subdivision of the estate comprised in LR. Antobwete/Njogune/1122 in terms of the rectified grant
4. Costs be borne by Jonathan Ncooro Nchebere (1st Administrator/Respondent)
5. By his replying affidavit sworn on 04th March, 2024, Jonathan Ncooro Nchebere (1st Administrator/Respondent) opposed the application and accused Jackson Muriungi M’Nchebere (2nd Administrator/Applicant) of declining to pay KES. 65,448/- owed to a private surveyor that participated in the subdivision together with the District Surveyor.
6. In a further affidavit sworn on 05th March, 2024, Jackson Muriungi M’Nchebere (2nd Administrator/Applicant) avers that he was not consulted on the engagement of the private surveyor and that the private surveyor was not necessary the land having been surveyed and subdivided by the District Surveyor.

Analysis and Determination

6. I have carefully considered the affidavit evidence on record and the issues for determination are a case has been made out for issuance of the orders sought.
6. Both parties concede that the estate was surveyed and partitioned by a District Surveyor and that the engagement of the private surveyor was done solely by Jonathan Ncooro Nchebere (1st Administrator/Respondent).
6. Jonathan Ncooro Nchebere (1st Administrator/Respondent) has not explained to the satisfaction of the court the necessity of engaging a private surveyor to resurvey and partition land that had already been surveyed and partitioned.
6. Even if for abundance of caution a private surveyor was necessary, Jonathan Ncooro Nchebere (1st Administrator/Respondent) had an obligation to consult his co-administrator.
6. For failing to consult, I find that Jonathan Ncooro Nchebere (1st Administrator/Respondent) cannot share the burden of paying the private surveyor with anyone else other than himself.
6. Consequently, I find that failure by Jonathan Ncooro Nchebere (1st Administrator/Respondent) to release the transmission documents on the ground that the private surveyor’s fees has not been paid is misguided and it is rejected.
6. The provisions of Section 83 of the *Law of Succession Act* Cap concerning the duties of administrators was enunciated *in Re Estate of Wilfred Munene Ngumi (deceased)* [2020] eKLR where the court stated:

“Section 83(g) of the *Act* mandates administrators of an estate to, within six months of confirmation of grant or longer period as the court may allow, complete the administration of the estate, and to produce to the court a full and accurate account of the complete administration.

This undertaking cannot be done unless the necessary documents are executed by the parties.....”.
6. By impeding the transmission of the estate to the beneficiaries, Jonathan Ncooro Nchebere (1st Administrator/Respondent) has acted contrary to the provisions of Section 83 (g) of the *Act* and this



no doubt has prejudiced the beneficiaries who have a legitimate expectation to receive their share of the Deceased's estate as ordered by the court.

6. Consequently, the summons dated 18th January, 2024 is hereby allowed in the following terms:
 1. Jonathan Ncooro Nchebere (1st Administrator/Respondent) is directed to within 14 days sign and submit the transmission documents for transmission of the estate comprised in LR. Antobwete/Njogune/1122 to the beneficiaries
 2. In default of (1) above, this court hereby authorizes and empowers the Deputy Registrar of this court to sign all the necessary transmission documents on behalf of Jonathan Ncooro Nchebere (1st Administrator/Respondent)
 3. In the alternative, Jonathan Ncooro Nchebere (1st Administrator/Respondent) is compelled to release the original Land Control Board Consent and all other necessary transmission documents to the Jackson Muriungi M'Nchebere (2nd Administrator/Applicant) to finalize the distribution of deceased's estate as per amended grant issued on 21st February, 2021
 4. In default of such release, the court hereby directs the relevant Land Control Board to issue a fresh Land Control Board Consent to Jackson Muriungi M'Nchebere (2nd Administrator/Applicant)
 5. Costs of this application shall be borne by Jonathan Ncooro Nchebere (1st Administrator/Respondent)
 6. This cause shall be mentioned on 28th May, 2024 to confirm compliance with these orders and transmission of the estate

DATED AT MERU THIS 14TH DAY OF MARCH 2024

WAMAE. T. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

For 1st Administrator/Respondent - Mrs. Ntarangwi for J.K.Ntarangwi & Co Advocates

For 2nd Administrator/Applicant - Mr. Muthomi for Kiautha Arithi & Co. Advocates

