



In re Estate of the Late Richard Mwaura Kinyariro (Deceased) (Succession Cause 584 of 2009) [2024] KEHC 2513 (KLR) (Family) (7 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2513 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 584 OF 2009
HK CHEMITEI, J
MARCH 7, 2024
IN THE MATTER OF THE ESTATE OF THE LATE
RICHARD MWAURA KINYARIRO (DECEASED)**

BETWEEN

NANCY WAMBUI MWAURA APPLICANT

AND

JOSPHINE WANJIKU MWAURA 1ST RESPONDENT

GEOFFREY GACHII MWAURA 2ND RESPONDENT

AND

PAUL KINYARIRO MWAURA INTERESTED PARTY

RULING

1. In his application dated 10th February 2022 the Applicant prays for the following orders:-
 - (a) That the order issued on 31st May 2021 be set aside.
 - (b) That the subdivision of LR No Kimotu 8514/1 carried pursuant to the said order is null and void.
 - (c) That the Administrator of the estate be ordered to cooperate with the family of the 4th house in the subdivision process of LR No Kimotu 8514/1
 - (d) That the Administrator of the estate be ordered to subdivide LR No Kimotu 8514/1 into three portions as per the certificate of confirmation of grant issued on 4th March 2019.
2. The application is based on the grounds thereof and the affidavit of the Applicant.



3. The application is opposed by the Respondent John Kariuki Kinyariro the Administrator of the estate sworn on 30th March 2022.
4. The gist of the application is that as at the time of the court granting the orders the 1st Respondent had since passed and thus she did not consent to the subdivision of the parcel of land.
5. That the subdivision was not done in accordance with the grant issued, that is, having the land subdivided into three portion. He claimed that the portion due to the 1st Respondent was given as 9.65 acres instead of 4 acres.
6. He also accused the surveyors and by extension the Administrator of destroying the mature trees, napier grass and tea bushes on the 1st Respondent portion.
7. The Applicant is for record purposes the Administrator of the estate of the late 1st Respondent.
8. The 2nd Respondent supported the Applicant's case though he admitted that he was present in court when the orders were issued. His major complaint was that the land was reduced to 3.96 hectares contrary to the grant.
9. The Respondent as stated above objected to the said application and in his replying affidavit submitted that the applicant was not a beneficiary to the estate herein and thus he had no locus.
10. That the argument that the land was not subjected to the Land control board was waived vide the letter from the Attorney General dated 28th March 2017. The net effect therefore was that nothing stopped the surveyors carrying out the exercise.
11. He denied that the surveyor had carried out the survey work against the confirmed grant from this court and thus the application ought to be dismissed.
12. The court has perused the application and the proceedings of 31st May 2021. The court has equally perused the submissions by the parties herein.
13. It is evident that that the 1st Respondent had passed on by the time the court allowed the application by consent of the parties present in court. None of the parties including the applicant nor the 2nd respondent notified the court of the situation.
14. However, looking at the orders issued by the court I do not think there would have been any prejudice occasioned by the absence of the 1st Respondent. The application was simply effecting or executing the grant. Already the estate had been divided according to the beneficiaries' wishes including the said Josephine.
15. I respectfully therefore do not find any prejudice suffered by her estate.
16. On the issue of the actual subdivision carried out on the ground I do not find any plausible reason by the Applicant impugning the said exercise. The fact that the parcel of land reduced from 4 hectares to 9.65 hectares was explainable. This according to the attached plan was due to the road reserve factor.
17. As a matter of fact, all the parties lost some portion in the exercise. This court takes judicial notice of the fact that any subdivision carried out on a parcel of land will obviously lead to some loss of some parts due to deductions expected like road reserves for that matter or any lawful statutory hiving off.
18. Further I do not think the issue of the Land control board was germane in the whole exercise. That is usually and almost a last part of the survey exercise when registration is being undertaken. At the



right time the Land Registrar may demand depending on whether it was a necessary component in the conveyancing exercise.

19. On the issue of loss of napier grass, tea bushes and tress the parties did not raise this before the court or at all during the consent or in the cause of time. It is therefore assumed that it never formed part of the deceased estate.
20. I think I have said much to demonstrate that the application is not merited. Let the family settle this matter once and for all by each party having their respective portions as per the rectified grant on record.
21. The sum total in my view is that there was no prejudice suffered by the house of the 1st Respondent in the execution of the grant. The application is otherwise dismissed with no order as to costs.

DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 7TH DAY OF MARCH 2024.

H K CHEMITEI

JUDGE

