



**In re Estate of Ute Hannelore Smith (Deceased) (Succession Cause E2508 of 2021) [2024] KEHC 2423 (KLR) (Family) (7 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2423 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE E2508 OF 2021**

**HK CHEMITEI, J**

**MARCH 7, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE UTE  
HANNELORE SMITH(DECEASED)**

**BETWEEN**

**BERNARD MBUGUA NGANGA ..... APPLICANT**

**AND**

**FIONA JANE ..... 1<sup>ST</sup> RESPONDENT**

**KANTARAMA SMITH ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Applicant filed his application for revocation of the grant dated 15<sup>th</sup> September 2022 on the grounds that the grant issued to the Respondents ought to be revoked as he had an interest in the land parcel number 1055/23 registered in the name of the deceased.
2. In his supporting affidavit he argued that he purchased the same in 1998 for a sum of Kshs 1,400,000 and that the deceased and the co registered owner refused to transfer to him. For that reason, he was a beneficiary in the estate and therefore he ought to be heard.
3. The Respondents filed a preliminary objection on a point of law dated 31<sup>st</sup> July 2023 that this court lacked jurisdiction to entertain the application as the same was a preserve of another court and in particular the Environment and Land court.
4. They further submitted that the matter was statute barred and consequently unenforceable legally.
5. That the Applicant was not a beneficiary within the meaning of Section 29 of the [Law of Succession Act](#).



6. The parties were directed to file their submissions. At the time of writing this ruling the applicant had complied.
7. I think the issue to begin with is on the question of this court's jurisdiction and its extent. There is no doubt that the applicants claim in the estate is that of a purchaser. According to him he paid a sum of Kshs 1,400,000 to the deceased. For some unknown reason the deceased and his partner did not transfer the land to him. They kept changing the goal posts.
8. Respectfully I do not think this court sitting as a Succession Court is able to interrogate such matters. Its remit is essentially on the question of who is a beneficiary to the estate and how it ought to be distributed. The Environment and Land court is in a better position to investigate the issues raised by the applicant.
9. If by any chance the said court finds that he had a stake in the suit land which comprises the estate herein then he automatically qualifies to be what is called a "creditor" to the estate. That decree shall thereafter be delivered to this court and be considered in the final distribution of the estate.
10. The court stated in *In re Estate of Stone Katbuli Muinde (Deceased)* [2016] eKLR that: "Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the *Civil Procedure Act* and the *Civil Procedure Rules*. This could mean filing suit at the magistrates' courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant then such decree should be presented to the probate court in the succession cause so that that court can give effect to it."
11. I think the same applies in equal measure in the situation at hand.
12. On the issue of the matter being time barred I do not think it is for this court to decide for the reasons stated above. The appropriate court shall decide on the issue touching on statute of limitation.
13. As to the question of being a beneficiary, that position will be well answered presumably after the relevant court has decided whether indeed there was an agreement between the deceased and the applicant. In essence, all is not lost to the applicant. He can still agitate his issues elsewhere and if successful then that decree can be enforced within this estate.
14. Suffice to state that for now I find merit in the preliminary objection and it is hereby allowed.
15. The application dated 15<sup>th</sup> September 2022 is hereby struck out with no order as to costs.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 7<sup>TH</sup> DAY OF MARCH 2024.**

**H K CHEMITEI**

**JUDGE**

