



Siro v Siro; Siro & 2 others (Beneficiary) (Succession Cause E7 of 2021) [2024] KEHC 2834 (KLR) (13 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2834 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE E7 OF 2021**

PJO OTIENO, J

MARCH 13, 2024

IN THE MATTER OF THE ESTATE OF KARU SIRO OMBAYE (DECEASED)

BETWEEN

TERESA MOKEIRA SIRO APPLICANT

AND

RICHARD OGETO SIRO RESPONDENT

AND

LYDIA KERUBO SIRO BENEFICIARY

KEVIN NYARIKI SIRO BENEFICIARY

ENOCK BINYANYA SIRO BENEFICIARY

RULING

1. The facts and circumstances of this case showcases the sad reality on how not to handle family disputes and the need for respect and appreciation by children that parenthood should never be taken for granted.
2. By a Will dated 13.11.2019 the deceased distributed his estate to his four children and literally left nothing for the widow. That fact seems to have pit the children, especially the 1st and 2nd Objectors, against their biological mother, the 1st administrator
3. On many occasions the Court sought and pleaded with the parties to retrace their past and appreciate that the relationship between the 1st Petitioner and the four children, as a mother and offspring, is irreplaceable but with not much success.
4. Ultimately, the parties were sent to Court Annexed Mediation and there was a final mediation settlement report dated 13.2.2023 and filed in Court on the same day. In that mediation settlement,



parties agreed that, the widow/Petitioner would get LR. No. Bungoma/Kiminini/904 measuring 8 acres, right to occupy Busotso/Shikoti/4504, distributed to Enock Binyanya Siro, till the widow settles in Bungoma Kiminini land, motor vehicle Reg. No. KAN 207Q and an equal share in the proceeds from Kakamega/Town Block 1/227 which was agreed, in the words of the settlement agreement, to be a family income generating project.

5. Earlier, on the 20.9.2022 when the parties attended Court, they reported a partial agreement to the effect that the wishes of the deceased be respected but the widow be treated as a beneficiary. The Court understood that the widow would be entitled to a share.
6. On the same day, the Court directed that an application for confirmation of the grant, be filed within 45 days after the parties agree on a formula to accommodate the widow as a beneficiary. When parties were back in Court on the 10.11.2022, no Summons for Confirmation of Grant had been filed and parties were given fourteen (14) more days to do so.
7. Pursuant to the enlarged timelines, the Petitioner (1st administrator) and the 1st Objector (2nd administrator) both filed separate Summonses for Confirmation of Grant which were irreconcilable. The Court then decided that the matter be remitted back to the Mediator to assist parties agree on who gets what part of the estate.
8. It was pursuant to that second reference that the mediation report dated 13.2.2023 was filed with the agreement already alluded to at the onset of this ruling. When therefore the parties attended court on the 16/3/2023, both administrators, and the 2nd Objector, who were present in court confirmed to court that the grant should be confirmed in accordance with the Mediation Settlement Agreement. The Court however directed that the share due to Enock Binyanya Siro, then with challenges with substance abuse, and committed to Rehabilitation Centre, be held in trust by the two administrators.
9. The Settlement Agreement and the consent by the parties as adopted by the Court, notwithstanding, the grant when issued, was so issued inadvertently in accordance with the Will and thus afforded no share of the estate to the widow. The Certificate however captured the order that the shares due to Enock Binyanya Siro be held in trust for him by the administrators.
10. It is that Certificate of Confirmation that has aggrieved the widow, 1st administrator, who has now brought the Summons filed in court on the 25/4/2023 seeking setting aside and or review of the said Certificate of Confirmation of Grant. The sole reason for seeking review is that the Certificate was issued in contravention of the parties' Mediation Settlement Agreement and their address to court when they attended on the 16.3.2023. Without the finesse of a legal mind, the application is tacitly founded on there being an error apparent on the face of the record and thus a sufficient cause to review the Certificate of Confirmation of Grant.
11. The application was opposed by the 2nd administrator by dint of the Replying Affidavit sworn on 18th May, 2023 before Elvira Wilunda Atamba, Commissioner for Oaths. The gist of the resistance was that the Mediation Settlement Agreement was reached at a session conducted on 12.2.2023 at which two children, Lydia Kerubo Siro and Enock Binyanya, Siro were not in attendance and that the mode of distribution at paragraph 7 of the Affidavit sworn on the Affidavit in Support of the Summons for Confirmation of Grant dated 21.11.2022 was by consent of all the children even though Lydia Kerubo never signed the schedule of distribution. The 2nd administrator then took the position that the 1st administrator was only entitled to life interest in the estate and personal effects of the deceased which the Court did not address and which it should address. The 1st administrator was then accused of abandoning her matrimonial home on own volition and deserted the children who now depend directly on the estate to pay school fees, bills and basic needs because they are not employed. He urged



that the Certificate of Confirmation of Grant be upheld save that the 1st administrator be accorded life interest and entitled to the personal effects of the deceased.

12. With the leave of the Court, the 1st administrator filed a Supplementary Affidavit whose gist was that the property was acquired with her assistance to the deceased owing to the fact that she got employed before the deceased and that the 2nd administrator was propelled by ego which has led him to mismanage the estate by withdrawing the sum of Kshs. 900,000/= from the account without rendering accounts and continued utilization of the rental income without rendering accounts yet the only daughter and last born son needs for school fees and fees to the rehabilitation have remain unpaid. She then adds that the Mediation Settlement was out of reference by the Court which binds upon the 2nd administrator, who has not challenged its existence and he is thus estopped from running away from the Settlement Agreement adding that all the children to the deceased are of age and none, other than the 2nd administrator, had filed an affidavit to contest her entitlement. The deponent then bemoans the arrogance of the 2nd administrator and attributes same to lack of sanction from the Court to him for the way he has mishandled the estate.
13. On her departure from the matrimonial home she attributed same to have been coerced by threats by the 2nd administrator against her life.
14. When parties attended court to canvass the application, the question of provision to Lydia and Enock for their needs; college fees and fees to rehabilitation facilities, respectively persisted. Lydia was said to have deferred her studies while Enock was said to have been denied exit from the facility on account of outstanding bills in excess of one million five hundred thousand Kenya Shillings. All agreed that the commercial property yields about 130,000/= per month in rental income.
15. On whether the 1st administrator is entitled to a share in the estate, Richard, Kevin and Enock took the very first position that the estate should only be shared with full respect to the wishes of the deceased and not otherwise. In particular, Enock said that he did not attend the mediation because he had his challenges and was confined at a rehabilitation facility and not in a state of mind to participate. On the rental income, he took the view that all the five family members should be signatories to the account while on the motor vehicles he sided with his brothers that all should be sold and proceeds shared out.
16. Lydia was however of the view that the mother, as their mother, is entitled to a share in the estate. She agreed that Mediation Settlement Agreement be honoured even though she did not attend the session because she was in college.
17. Having read and reviewed the Court records and the rival affidavits filed by the two administrators and the address by the parties to Court, the Court discerns the only issue for determination to be whether a case for review has been made out.
18. A casual reading of the proceedings of 16.3.2024 when the grant was confirmed reveals, without much scrutiny, that both sides asked the Court to confirm the grant in terms of the Mediation Settlement Agreement. An agreement between the parties in a suit is a contract that may only be upset upon demonstration of a factor sufficient to vitiate a contract. A Mediation Settlement has the same character and when the same is court sanctioned, the binding nature is even compelling for alternative dispute resolution in how a value of the *constitution* in dispensation of justice.
19. A reading of the file brings out a mistake and error on the part of the court when the Court ordered the Summons for Confirmation of Grant dated 21.11.2022 to be allowed and the estate distributed in terms of the consent filed. When parties made reference to consent filed, they were understood to mean and the court should have been specific to refer to the Mediation Settlement Agreement. Because of lack of clarity, when the Certificate was typed and issued, it was informed by the consent filed with the



- Summons dated 21.11.2022. That document called schedule on distribution qualifies not as a consent because both the 1st administrator and Lydia did not sign it and were not party to it.
20. That is a glaring mistake and error that confronts the court on its face and must be corrected by an order for review.
 21. It is, in the interest of substantive justice, reviewed to the extent that the Certificate of Confirmation issued and dated 24.3.2023 is recalled and revoked. The orders of the Court dated 16.3.2023 allowing the Summons for Confirmation of Grant dated 21.11.2022 is set aside and in its place substituted an order that the Grant be confirmed and the estate distributed in terms of the Mediation Settlement Agreement dated 13.2.2023.
 22. A rectified Certificate of Confirmation shall thus issue in accordance with the terms of the Mediation Settlement Agreement with a rider that the share of Enock be registered in the names of administrators, to hold in trust for him until such a time that he shall have overcome his challenges and become able to manage his affairs.
 23. When issued, the two administrators shall have a period of ninety (90) days to implement the Certificate and have the estate transmitted in full. The two administrators are once called upon to act in harmony and with due respect by the 2nd administrator to the 1st as his mother and only surviving parent.
 24. The Court however notifies the parties that it reserves the power to remove any administrator who shall appear to hold back the process of transmission.
 25. In addition, the 2nd administrator, as the person who has been in charge of rent collection from the estate property yielding rent, is directed to compile and file a statement of accounts showing all the rents collected and how the same has been applied from the time of the deceased death to the end of February, 2024.
 26. From today going forward, all rents yielding from the estate property shall be deposited into the estate account currently operated by the 2nd administrator to henceforth operated by all the five beneficiaries in that every withdrawal therefrom shall only be done by all the five (5) beneficiaries or by an order of the Court.
 27. This Order be extracted and served upon the tenants for compliance.
 28. There shall be no order as to costs.
 29. Mention on 16.9.2024 to confirm the state of administration and transmission in particular.

DATED AND SIGNED AT KAKAMEGA, THIS 13TH DAY OF MARCH, 2024.

PATRICK J. O. OTIENO

JUDGE

DATED, SIGNED AND DELIVERED AT KAKAMEGA, THIS 13TH DAY OF MARCH, 2024.

S. CHIRCHIR

JUDGE

In the presence of:

Teresa - 1st Administrator

Richard - 2nd Administrator



Kevin - Beneficiary

Court Assistant: Godwin

