



**In re Estate of Francis Wekesa (Deceased) (Succession Cause
3 of 2019) [2024] KEHC 3871 (KLR) (19 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3871 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 3 OF 2019**

DK KEMEL, J

APRIL 19, 2024

IN THE MATTER OF THE ESTATE OF THE LATE FRANCIS WEKESA

IN THE MATTER OF

**JOSPEH WAMALWA WEKESA 1ST PETITIONER
FLORENCE N. WEKESA 2ND PETITIONER
ANN KISAKA OTIENO 3RD PETITIONER**

RULING

1. Vide Chamber Summons application dated 15th January 2024, the 2nd and 3rd Petitioners/Applicants pursuant to the Judicature Act Chapter 8 of Laws of Kenya, Part 1 Rule 3 and section 47 of the Law of Succession Act and Rules 73 of the Probate and Administration Rules sought orders the following reliefs:
 - a. Spent
 - b. Spent
 - c. Spent
 - d. Spent
 - e. That the Honourable court be pleased to issue an injunction against the 1st Petitioner/ Respondent from preventing the other beneficiaries from accessing their respective shares on land parcel number E. Bukusu/ S. Kanduyi/2612 and be allowed to prepare their respective parcels for planting for the season 2023/2024.
 - f. The Honourable Court be pleased to allow the 2nd Petitioner/Applicant sell a portion of land measuring 100 ft x100ft from the land parcel E.bukusu/S.Kanduyi/2612 to enable her build a house which the 1st Petitioner and his agents demolished in the year 2019, and also to enable her



carry out a survey and sub-divide the land as per the confirmed grant issued on 23rd November 2023.

- g. The Honourable Court be pleased to order and compel the 1st Petitioner/Respondent to sign LR Form 39 & 42 and provide KRA PIN, passport photo, copy of the national identity card for the purpose of registering the confirmed grant at the Land Registry and in alternative the Deputy Registrar be allowed to sign on behalf of the 1st Petitioner.
 - h. The Honourable Court be pleased to remove Joseph Wamalwa Wekesa as an administrator of the Estate of Francis Wekesa (deceased) for being uncooperative.
2. The application was premised on grounds on the face of it and the annexed supporting affidavit sworn by Florence Namarome Wekesa whose case is inter alia; that the 1st petitioner has not acted in the best interest of the other beneficiaries; that the 1st petitioner has been leasing and selling portions of the land to the exclusion of the other beneficiaries; that the 2nd petitioner has no house for herself to live in as her previous house was demolished by the 1st Petitioner after he chased her away; that the 2nd petitioner is aged, sickly and who requires shelter, food and medication; that the 2nd petitioner has no source of income to enable her carry out the survey, subdivision and registration of land to the beneficiaries and thus seeks to sell a portion of land measuring 100ft x 100 ft from her share; that the 1st petitioner is frustrating and delaying the process of administration of the estate of the deceased and hence the need to remove his name from the grant as an administrator will serve the ends of justice.
 3. It is imperative to reiterate that this Court delivered its judgement on the issue of confirmation of grant on 17th November 2023 where this Court distributed the estate of the deceased and issued a certificate of confirmation of grant. The 1st Petitioner being aggrieved by the said judgement filed a notice of appeal to the Court of Appeal and that none of the parties sought for stay of execution of the said judgement in this Court or the Court of Appeal. This simply means that in absence of such orders of stay, the beneficiaries are at liberty to access their respective portions of the land namely E.Bukusu/S.Kanduyi/2612.
 4. The application was canvassed by way of written submissions.
 5. After careful analysis, the issue for determination is whether the applicants have met the prerequisite for grant of orders sought.
 6. The principles upon which the Court may stay the execution of orders appealed from are well settled. Order 42 Rule 6 of the Civil Procedure Rules stipulates: -

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but the court appealed from may for sufficient cause order stay of execution of such decree or order and whether the application for such stay shall have been granted or refused by the court appealed from the court to which such appeal is preferred shall be at liberty on application being made to consider such application and to make such order thereon as may to it seem just and any person aggrieved by an order of stay made by the court from whose decision the Appeal is preferred may apply to the appellate court to have such orders set aside.

No order for stay of execution shall be made under sub rule 1 unless:-

- a. The Court is satisfied that substantial loss may result to the 1st Applicant unless the order is made and that the application has been made without unreasonable delay; and



- b. Such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.
7. It is important to remind the Applicants that this Court already dispensed itself on the issue of the confirmation of the grant. A certificate of confirmation of grant has already been issued clearly stipulating the distributed portions of each beneficiary. It is important for the Applicants to note that at this juncture as long as the 1st Petitioner/Respondent has not tendered his application for stay of execution orders, it is within their right courtesy of the judgement delivered by this Court on 17th November 2023 to sell what ever acres they want from their respective distributed portions.
8. With regard to prayer (g) this Court cannot issue the order sought as it is clear the 1st Petitioner/ Respondent was aggrieved by the said judgement that confirmed the grant and has every intention to appeal the same judging by the Notice of Appeal to the Court of Appeal.
9. With regards to prayer (h) this Court orders the Applicants to make the proper application for the removal of the 1st Petitioner as an administrator of the estate of the deceased herein and which shall be scheduled for hearing and determination.
10. The upshot of the foregoing observations is that the 2nd and 3rd Petitioners' application dated 15.1.2024 partially succeeds. The same is allowed in terms of prayers (e), (f), and (g) thereof. Each party to bear their own costs.

Orders accordingly.

DATED AND DELIVERED AT BUNGOMA THIS 19TH DAY OF APRIL, 2024

D KEMEI,

JUDGE

In the Presence of:

No appearance Wasilwa for 1st Petitioner

Wekesa for Onyando for 2nd and 3rd Petitioners

Kizito Court Assistant

