



In re Estate of Musa Busuru Khauka (Deceased) (Succession Cause 159 of 1998) [2024] KEHC 3874 (KLR) (19 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3874 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 159 OF 1998**

DK KEMEL, J

APRIL 19, 2024

IN THE MATTER OF THE ESTATE OF MUSA BUSURU KHAUKA (DECEASED)

BETWEEN

GEORGE MUKHUNGU CHENGOLI PETITIONER

AND

VICTOR WAFULA NALULUNGU OBJECTOR

RULING

1. The Objector herein lodged an affidavit in protest dated 21st June 2023 and filed on even date in which he challenged the summons for confirmation of grant as filed by the Petitioner herein. The Objector's gravamen is inter alia; that the same is fatally defective as there was no consent sought nor given in support; that the Petitioner only indicted the mode of distribution for one parcel of land being Malakisi/East/Sasuri/456 while leaving out the other parcel namely East Bukusu/South Nalondo/2882; that this Court confirmed vide its judgment delivered on 26th January 2016 that East Bukusu/South Nalondo/2882 belonged to the deceased; that the Court further in its judgement delivered on 26th January 2016 indicated that the same parcels belonging to the deceased be distributed in strict compliance with its order as the then administrator had included non-beneficiaries; that the deceased prior to his death distributed his estate to all his sons and his two wives; that the mode of distribution as proposed by the Petitioner only seeks to enrich himself; that all his brother and their families who were allocated land in East Bukusu/South Nalondo/2882 have since sold off their parcels as a result of which the Petitioner refused to have the same placed for distribution.
2. According to the Objector, the appropriate mode of distribution is as follows:



Land Parcel No. Malakisi/east Sasuri/456		
No.	Beneficiary's Name	Acres
1	Robert Wachiye	2.5 Acres
2	Christopher Mukhungu	2.5 Acres
3	Francis Khaukha	2.5 Acres
4	Andrew Wanjala	2.5 Acres
5	Constant Simiyu	2.5 Acres
6	Ali Mukenya	2.5 Acres
7	Victor Wafula	8.3 Acres
8	Joseph Chengoli	2.0 Acres
Land Parcel No. Malakisi/east Sasuri/456		
1	Selina Naliaka	2.0 Acres
2	Lisabet Mutua	2.0 Acres
3	Emmanuel Mukhwana	2.5 Acres
4	Bernard Maliemu	2.0 Acres
5	Godfrey Juma	2.0 Acres
6	Joseph Chengoli	2.0 Acres
7	Augustine Khisa	1.5 Acres
8	Martin Khaukha	2.0 Acres

3. In response to the affidavit in protest, the Petitioner filed his supplementary affidavit dated 24th July 2023 and filed on even date. He averred that the same application was made in bad faith, its bad in law and fatally defective and ought to be dismissed with costs.
4. He averred that the deceased had shared his parcel of land East Bukusu/South Nalondo/2882 measuring approximately 4 acres as follows:



Land Parcel East Bukusu/south Nalondo/2882		
No.	Beneficiary's Name	Acres
1	Selina Naliaka	2 Acres
2	Constant Mukhungu	½ Acres
3	Christopher Mukhungu Busuru	½ Acres
4	Victor Wafula Nalulungu	½ Acres
5	Ali Mukenya	½ Acres

5. He averred that land parcel North Malakisi/East Sasuri/456 measuring approximately 24.5 acres was yet to be distributed and that his mode of distribution is the modest one that ought to be adopted by the Court.
6. According to the affidavit in support for confirmation of grant, the proposed mode of distribution by the Petitioner is as follows:



Land Parcel No. Malakisi/east Sasuri/456		
No.	Beneficiary's Name	Acres
1	Robert Wachiye (dcsd)	3.0 Acres
2	Christopher Mukhungu(dcsd)	4.0 Acres
3	Francis Khaukha(dcsd)	3.5 Acres
4	Andrew Wanjala Masa	3.5 Acres
5	Constant Simiyu	3.5 Acres
6	Ali Mukenya	3.5 Acres
7	Victor Wafula	3.5acres
8	Joseph Chengoli	3.5 Acres
9	Emmanul Mukwana	0.5 Acres
10	Augustine Khisa	0.5 Acres
11	Martin Khauka	0.5 Acres
12	Godfrey Juma	0.5 Acres
13	Bernard Maliemu	0.5 Acres

7. Parties agreed to canvass the protest and the summons for confirmation of grant by way of written submissions. Parties filed and exchanged their respective submissions.
8. According to the Petitioner, it was submitted that the deceased had land parcel North Malakisi/East Sasuri/456 measuring approximately 24.5 acres and land parcel East Bukusu/South Nalondo/2882 measuring approximately 1.6 Ha. The deceased was survived by 13 beneficiaries of whom he had catered for as per his mode of distribution contrary to the one proposed by the Objector. He submitted that prior to the filing of the summons, he sought the consent of all the beneficiaries and that only the Objector refuted.
9. The Objector submitted that his mode of distribution caters to the whole family members and urges this Court to adopt the same. He submitted that by the proposed mode of distribution the Petitioner only focuses on one parcel of land North Malakisi/East Sasuri/456 to the exclusion of East Bukusu/South Nalondo/2882.
10. The application for determination is a summons for confirmation of grant as well as the objectors protest. Grants are confirmed under section 71 of the [Law of Succession Act](#), which states as follows:

“Confirmation of Grants



71. Confirmation of grants

- (1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.
- (2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may —
 - (a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or
 - (b) if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 of *this Act*, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be administered; or
 - (c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or
 - (d) postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:

Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares.”

11. In confirmation applications, there are two principal factors for the Court to consider namely; appointment of administrators and distribution of the estate. The principal purpose of confirmation is the distribution of the assets left behind by a deceased.
12. From the foregoing evidence of the parties, it is not in dispute that the estate of the deceased is at the confirmation of grant that was issued on 3rd August 2022. It is also not in dispute that the late Musa Busuru Khauka had the following assets: land parcels North Malakisi/East Sasuri/456 and East Bukusu/South Nalondo/2882. I think it is important to point out at this juncture that for as long as parties are not in agreement, it is left to the Court to apply the laid down law and principles to arrive at what the Court would consider to be fair and just in the circumstances of the case.



13. This inheritance is by descent. The claims of descent and all existing models and rules are set forth in the [Law of Succession Act](#) covering both real and personal property.
14. The deceased, as evidenced by a certificate of death filed herein, died on 9th March 1996 intestate. It follows that under section 2(1) of the [Law of Succession Act](#) the law applicable is the [Law of Succession Act](#). The deceased died intestate after [the Act](#) came into force on 1st July, 1981.
15. The law relating to the distribution of the estate of an intestate was stated by the Court of Appeal sitting in Meru in [Justus Thiora Kiugu & 4 others V. Joyce Nkatha Kiugu & another](#), [2015] eKLR. Reinforcing the duty of the Court to promote alternative forms of dispute resolution under Article 159 (c) of the [Constitution](#) of Kenya, the Court held that if the parties agree on a mode of distribution of the estate of an intestate, then the Court must adopt that consent and make it an order of the Court. If the parties are unable to agree, then the Court has no discretion but to distribute the property as per the provisions of the [Law of Succession Act](#), Cap 160 Laws of Kenya.
16. The [Law of Succession Act](#) does not allow any person to distribute assets of a deceased person other than through the process of succession. The deceased in this matter died post the commencement of the [Law of Succession Act](#) (Cap 160 Laws of Kenya). That is the applicable law in the distribution herein.
17. Beneficiaries can and do often agree on the mode of distribution of a deceased's estate. Where, however, there is disagreement on the mode of distribution, the Court must step in and invoke the law.
18. It was averred by the Petitioner that the deceased distributed his parcel No. East Bukusu/South Nalondo/2882 prior to his demise as per the proposed mode of distribution and the Objector averred that all of his brothers and his families who were allocated land on the same parcel sold off their portions and hence the Petitioner's refusal to have the same distributed.
19. The Petitioner alleged that his proposed mode of distribution was in line with the confirmed grant that was issued to the deceased herein and that it is clear from the Court record that the only contention of the Objector is the exclusion of parcel No. East Bukusu/South Nalondo/2882 from the mode of distribution as proposed by the Petitioner. That being the position, I find that the mode of distribution proposed by the Petitioner, which was consented to by all the other beneficiaries except the Objector, to be the most suitable in the circumstances in view of the fact that it is backed by a majority of the beneficiaries and further by the fact that all the beneficiaries have been catered for unlike the Objector's proposed mode of distribution which has left out some beneficiaries. It seems the Objector's intention is to rock the boat from within and thereby delay this very old matter from being finalized.
20. In view of the forgoing observations, the following orders are hereby made:
 - i. The Objector's protest dated 21.6.2023 lacks merit and is dismissed.
 - ii. The summons for confirmation of grant dated 9.2.2023 are hereby allowed and that the mode of distribution proposed by the Petitioner, George Mukhungu Chengoli on the properties namely land parcel Nos. North Malakisi/East Sasuri/456 and East Bukusu/South Nalondo/2882 is allowed as prayed.
 - iii. That grant of letters of administration made on 3rd August 2022 to the Petitioner is hereby confirmed and that the estate of the deceased shall be distributed as directed vide the schedule of distribution annexed to the affidavit in support of the summons for confirmation of grant.
 - iv. A Certificate of Confirmation of grant shall issue to the Petitioner.
 - v. Each party to meet their own costs.



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

D.KEMEI

JUDGE

In the presence of :

George Chengoli for Petitioner

No appearance Mukholi for Objector

Kizito Court Assistant

