



REPUBLIC OF KENYA



In re Estate of Enos Namaswa Muyumba (Deceased) (Succession Cause 623 of 2014) [2024] KEHC 3986 (KLR) (18 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3986 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 623 OF 2014
SC CHIRCHIR, J
APRIL 18, 2024**

IN THE MATTER OF THE ESTATE OF ENOS NAMASWA MUYUMBA (DECEASED)

BETWEEN

LUKE MUKONYOLE MUYUMBA PETITIONER

AND

SHADRACK MUYUMBA KHWATENJE BENEFICIARY

AND

RUTH MUCHINIA NAMASWA 1ST OBJECTOR

BONEFACE LIVUYI NAMASWA 2ND OBJECTOR

RULING

1. Through the summons dated 25th January 2021, the Applicant / 1st petitioner, Luke Mukonyole Muyumba seeks the following orders;
 - a. That this honourable court be pleased to review the orders made on the 6th day of December 2021 with regard to the distribution specifically distributing plot No. 14 Samitsi Market to Juma Wambete.
 - b. That the estate of the deceased comprised of plot no. 14 Samitsi Market be distributed to Shadrack Muyumba Khwatenje
2. The application was supported by an affidavit sworn by the Applicant. He avers that he was not aware that the summons for confirmation dated 28/10/2019 had been filled in court: that he was not notified about the hearing of the summons and was not aware of the proposed mode of distribution proposed. He further states that he never signed any consent of distribution and neither did Shadrack Muyumba shitenje.



3. He further avers that the other beneficiaries , namely Leah Namaswa, Inyanji Namaswa, Lishindu Namaswa, Khatoya Namaswa, Samson Musotsi Muyumba, Samuel Muyumba, Yudas Muyumba Ngulushi, Absolomo Muyumba Ngulushi, Nashon Musumba and William Alwanda Namaswa were also not aware about the hearing date of the summons.
4. The Applicant further states that it was only when one of the beneficiaries went to repair the shops of Samitsi Market that he was arrested for trespass by one Juma Wambete, who alleged that he was now the owner of the property in question.
5. The Applicant asserts that the said Juma Wambete is not an heir to the estate of the deceased and that the deceased never sold the said property to him; that shadrack wambete has been in possession of the plot since 1967 and has been paying the land rates in respect of the plot. He has annexed copies of the receipts for land Rates (marked as LMM1 and 2).
6. He avers that he is satisfied with the manner in which parcel No. S. Kabras/Samitsi/1462 was distributed but not so plot no 14 at Samitsi Market, which he insists , should be given to the beneficiary, Shadrack Muyumba Khwatenje.
7. In his replying affidavit dated 8th February 2022, the 2nd objector avers that the applicant is not entitled to the orders that he seeks.
8. He avers that the plot number MKT 045 /14 was the property of the deceased. He has annexed the payment receipts for property rates.
9. According to the objector, the applicant is the brother to the deceased and was not entitled to the personal property of the deceased . He further states that the plot in question was legally transferred by the family of the deceased to Juma Wambete, the current owner. He further that the documents produced by the Applicant do not relate to plot No. 045/14.
10. He finally submits that the applicant and his brothers were invited to participate in the succession proceedings but failed to turn up prompting the honourable court to confirm the grant without the participation of the applicant and his brothers.

Determination

11. Though the Law of succession makes no provision for review , the courts have traditionally borrowed the provisions of the *Civil procedure Act* to determine review Applications, pursuant to the provisions of Rule 63 of the *Probate and Administration. Tules*
12. Order 45 Rule 1 of the *Civil Procedure Rules*, provides as follows;
 - (1) Any person considering himself aggrieved-
 - a. By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - b. By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any additional sufficient reason, desires to obtain a review of the decree or order, may apply for review of judgement to the court which passed the decree or made the order without unreasonable delay.



13. In *John M. Njoroge & Others Vs. Cecilia M. Njoroge & Others* (2016) eKLR, the court held: An application for review in succession proceedings can be brought by a party to the proceedings, a beneficiary to the estate or any interested party. However, the application must meet the substantive requirements of an application brought for review set out in order 45 of the *Civil Procedure Rules*.”
14. In the present case, are the review orders warranted?
15. In his application and supporting affidavit dated 25th January 2022, the applicant stated that there was an error on the orders made on 6th August 2021 where the court allocated plot No. 14, Samitsi to one Juma Wambete whom he claims was not a beneficiary to the estate. He further claims that the confirmation of the certificate had errors ,and that he never participated in the confirmation process since they were not served with the required notices.
16. The applicant avers that the beneficiary, Shadrack Muyumba Khwatenje should be given the parcel land since he has been paying the land rate and annexed copies of the receipt marked LMM. However the receipts for land rates indicate the property belonged to one Muyumba Ngulusia.
17. I have taken note of the fact that the court in its ruling dated 6th August 2021 addressed the issue of the beneficiaries in attendance on the day of confirmation of the certificate of grant. The court noted that the parties were in agreement with the mode of distribution although the consent Form 37 duly filled by all the parties was not filed.
18. It is instructive to note that some of the other beneficiaries, alleged not to have consented to the distribution attended the confirmation proceedings and they raised no objection to the proposed mode of distribution.
19. The Applicant has not also explained why the plot at samitsi should go to one Shadrack Muyumba Khwetenje or in what capacity he is claiming it. Further the receipts for payment of rates he has attached do not bear his name.
20. The Applicant has ststed that the Certificate of confirmation of Grant has errors but has not made any attempt to pinpoint the alleged errors.
21. In effect the Applicant has not demonstrated that there is an error on the face of the record The Court of Appeal in the case *National Bank of Kenya Ltd -v- Njau* (1995-98) EA 249 held that:

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error must be self-evident and should not require an elaborate argument to be established....”(Emphasis added)
22. The Applicant has further failed that there are any sufficient grounds to warrant a review.
23. The claim by the alleged beneficiary is superficially presented such that this court is unable to ascertain his claim and make a determination on whether the mode of distribution should be reviewed.
24. There is no merit in the application of 25th January 2022.. The same is hereby dismissed.

DATED , SIGNED AND DELIVERED AT NAIROBI VIA MICROSOFT TEAMS THIS 18TH DAY OF APRIL 2024

.....

S.Chirchir

Judge.



In the presence of:

Godwin- Court Assistant

Mr. Manyoni for the Administrator

