



In re Estate of Timothy Kiok Kinyamal (Deceased) (Succession Cause E021 of 2021) [2024] KEHC 5944 (KLR) (20 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5944 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
SUCCESSION CAUSE E021 OF 2021
F GIKONYO, J
MAY 20, 2024
IN THE MATTER OF THE ESTATE OF TIMOTHY
KIOK KINYAMAL (DECEASED)
IN THE MATTER OF THE LAW OF SUCCESSION
ACT**

IN THE MATTER OF
HAYZEL IHSEN KIOK 1ST APPLICANT
KIOK HENRY LEKISHON 2ND APPLICANT

RULING

Review of confirmed gran

1. The petitioners have applied *vide* a Summons dated 3rd of April 2024, expressed to be brought under section 37 of the [Law of Succession Act](#) and rule 49 of the [Probate and Administration Rules](#) for orders of review of the confirmed, more specifically, the court to allow the petitioners to sell estate property known as Cis-mara/koiyaki/dagurugurueiti/2681 measuring approximately 20.23Ha or 49.98 acres for a sum of Kshs. 350,000 per acre realizing a total consideration of Kshs. 17,500,000/-.
2. The application is premised upon grounds set out in the summons and the affidavits in support thereof.
3. The petitioners averred that, the widow is not in any gainful employment and survives through sale of cattle and sheep which is not sufficient for their upkeep and other needs. And, that, the deceased did not leave any money in his bank account, yet, the children of the deceased require school fees amounting to Kshs. 1,109,749.20 per year. According to the petitioners, the benefactor who was paying the school fees withdrew the sponsorship. The family is now vulnerable and the children may not complete their education unless they are allowed to sell the said property.



4. The petitioners have provided a proposal of investment of the proceeds of the sale which is projected to yield a monthly rental income of Kshs. 200,000.
5. The petitioners have also stated that, their matrimonial home is on a four-acre piece of land which is the deceased's inheritance in his father's estate, but which is under succession; the deceased will get it as his inheritance. They are and have been living on this land even during the life of the deceased.

Analysis And Determination

6. The grant herein has already been confirmed. But, in proper cases, a confirmed grant, may be reviewed for good reason.
7. Nevertheless, in this case, two significant matters emerge.
8. The property to be sold is the only property of the estate. The information laid before the court indicates that, the property in which they live, is still under succession. It is strongly advised that the administrators of this estate should join the other succession, pursue and protect their rights.
9. There are two minors who are amongst the beneficiaries of the estate.
10. Every child has the right to inherit property and not to be disinherited or deprived of such property. The court as well as the fiduciary should protect and promote these rights.
11. The property of a minor inherited under the [Law of Succession Act](#) is held under a continuing trust. The trust form created by law is to offer protection to minors and their rights to inherit, and to protect the property. The resulting trust places strict fiduciary obligations on the trustees in dealing with the trust property, with attendant severe penalties including imprisonment as well as full restitution of or the property of benefit accruing to the child, for breach. The breach may take many and different forms, including disinheriting or otherwise depriving a child of any property or benefit accruing to the child under or by virtue of the law relating to inheritance. See section 17 (3) & (4) of the [Children Act](#).
12. Under article 27(1) of the [Constitution](#): -

Every person is equal before the law and has the right to equal protection and equal benefit of the law.
13. Every child is also entitled to equal treatment and protection, and to the benefit of the law which places upon the court the obligation to protect and promote these rights.
14. For the avoidance of doubt, the court bears a strict obligation to safeguard the best interest of the child, protect and promote their right including right to inherit, and prevent disinheritance or deprivation of the child of property, which draws upon the principle of best interest of the child enshrined in article 53 of the [Constitution](#).
15. This is the context upon which this application is seen.
16. The petitioners propose to sell the only land that comprises the estate property. Sale of the only property without a water-tight, sustainable and viable investment of trust property is most risky undertaking.
17. Whereas the proposal by the petitioners of buying a plot and building rental houses sounds attractive, it is not guaranteed investment.
18. The court withholds its permission to review the confirmed grant especially to allow sale of the shares of the minor.



19. However, the adult dependants may sell their shares as owners. Upon distribution of the estate, the beneficiaries become the beneficial owners of their identified shares or portions of land. And, persons with the legal capacity, may deal with the property as owner. To facilitate this, the grant will be amended to specifically indicate that the shares of the minors will be held in a resulting trust for them, giving room for subdivision of the estate to vest the shares in each dependant.
20. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 20TH DAY OF MAY, 2024

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F. GIKONYO M

JUDGE

In the presence of: -

Masikonde for the applicant

Otolo C/A

