



REPUBLIC OF KENYA



**In re Estate of the Late Daudi Arap Miso (Deceased) (Succession Cause 106 of 1999) [2024] KEHC 5727 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5727 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 106 OF 1999**

**JK SERGON, J**

**MAY 9, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE DAUDI ARAP  
MISOI (DECEASED)**

**BETWEEN**

**DANIEL CHELUGET ..... 1<sup>ST</sup> PETITIONER**

**JANETH CHELUGET ..... 2<sup>ND</sup> PETITIONER**

**GEOFFREY KIRUI ..... 3<sup>RD</sup> PETITIONER**

**ISHMAEL CHELUGET ..... 4<sup>TH</sup> PETITIONER**

**AND**

**FREDRICK KIPKORIR KITUR ..... OBJECTOR**

**RULING**

1. The applications coming up for determination are dated 5th April, 2023 and 11th November, 2022.
2. There is a notice of motion dated 5th April, 2023 seeking the following orders;
  - (i) That the Honourable Court be pleased to issue an order directing the Deputy Registrar to execute transfer forms for purposes of effecting transfer to the beneficiaries of the estate of the late Daudi Arap Miso with respect to the parcel of land registered as KERICHO/CHEMOIBEN/142 in compliance with the rectified grant of this Honourable Court dated 30th June, 2022 in the place of Daniel Cheluget the 2nd Petitioner/Respondent herein.
  - (iv) That the costs of this Application be borne by the 2nd Petitioner/Respondent herein.
3. The application is supported by grounds on the face of it and the supporting affidavit of Fredrick Kipkorir Kitur the applicant herein.



4. The applicant avers that on 30th June, 2022 they were issued with a rectified certificate of confirmed grant and further that the 2nd Petitioner/Respondent had refused and/or neglected to sign off the transfer forms ever since the grant was confirmed.
5. The applicant avers that the beneficiaries in this cause are desirous to have the titles to their respective parcels of land as contained in the grant yet the grant was confirmed on 30th June, 2022 but the parties are yet to take out their titles in accordance with the confirmed grant.
6. Contemporaneously, this court has also been moved to determine a summons dated 11th November, 2022 seeking the following orders:
  - (i) Spent.
  - (ii) That the Honourable Court be pleased to direct the OCS, Litein Police Station to provide security to the District Surveyor, Litein in subdividing LR. Kericho/Chemoiben/142 as per the certificate of confirmed grant.
  - (iii) That the Honourable Court be pleased to compel Ismael Cheluget, Daniel Cheluget, Janet Cheluget and Geoffrey Kirui being joint administrators to sign mutation forms R.L 42, R.L 39 and R.L 7 in default the Deputy Registrar, High Court to sign on their behalf.
  - (iv) That the Honourable Court grants the application herein costs.
7. The application is supported by grounds on the face of it and the supporting affidavit of Christopher K. Cheluget the applicant herein.
8. The applicant avers that some of the beneficiaries of the estate are opposed to the enforcement of the rectified certificate of confirmation of grant, moreso, that in the recent past, some of the beneficiaries have threatened violence to the use and occupation of Kericho/Chemoiben/142.
9. The applicant further avers that in light of the foregoing, he approached the District Surveyor Litein for subdivision of Kericho/Chemoiben/142, however, the District Surveyor requested for a court order together with police security in order to carry out the subdivision exercise being well aware of the volatile situation on the ground.
10. The applicant avers that he thereafter sought out the OCS Litein Police Station to provide security during the sub division, however, the OCS Litein Police Station advised him to obtain a court order.
11. The applicant avers that the administrators had refused and/or reneged to execute the rectified certificate of confirmation of grant without any justification and as a result the beneficiaries of the deceased stand to suffer immensely.
12. The applicant therefore urged this Honourable Court to compel Ismael Cheluget, Daniel Cheluget, Janet Cheluget and Geoffrey Kirui being joint administrators to sign mutation forms R.L 42, R.L 39 and R.L 7 in default the Deputy Registrar, High Court to sign on their behalf.
13. The court gave directions that both applications dated 5th April, 2023 and 11th November, 2022 be fixed for hearing on 5th March, 2024.
14. During the inter partes hearing, counsel representing the parties made oral submissions.
15. On one part, Mr. Mugunya Learned Counsel for Fredrick Kitur, a beneficiary of the estate of the deceased, submitted that their application dated 5th April, 2023 is unopposed and therefore urged this Court to allow the said application as it was unopposed.



16. On the other part, Mr. Miruka Learned Counsel for Christopher Cheluget, a beneficiary of the estate of the deceased, submitted that their application dated 11th November, 2022 was seeking similar orders with the one dated 5th April, 2023. The Learned Counsel submitted that there was no response to the said application and therefore the same application should be allowed.
17. I have considered the pleadings by the parties and the issue for determination is whether to compel the respondents to execute transmission documents and any other documents required at the Lands Registry for the purposes of effecting distribution of the deceased's estate in accordance with the rectified certificate of confirmation of grant issued 30th day of June, 2022. The answer is in the affirmative. The rectified certificate of confirmation of grant was issued on 30th June, 2022. It is almost two years since this Court issued a rectified certificate of confirmation of grant and there seems to be an impasse in the administration of the estate giving rise to the instant applications.
18. This Court has noted that in both applications, the applicants are seeking to have this Court issue orders compelling the Deputy Registrar to execute transfer forms for purposes of effecting transfer to the beneficiaries of the estate of the late Daudi Arap Misoi with respect to the parcel of land registered as Kericho/Chemoiben/142 in compliance with the rectified grant of this Honourable Court dated 30th June, 2022 in the place of the joint administrators. However, I find that there is no need to bother the Deputy Registrar to sign transmission documents as it is the duty of the administrators to execute it and where reluctant, fresh administrator (s) will be appointed to complete the process.
19. In *Paskaroa Mogire Ontita v Joseph Mose Akuma Succession Cause No. 209 of 2000* (unreported) in a similar application, the Court held that the Deputy Registrar cannot usurp the powers of an administrator and therefore the court lacked the jurisdiction to grant the orders sought.
20. In the *Estate of Reuben Mugesani Bulimu (Deceased) Succession Cause No. 847 of 2013* Musyoka J. observed as follows; "After a grant is confirmed, and a certificate of confirmation of grant issued, the process that follows is known as transmission, of the property from the name of the deceased to that of the beneficiaries named in the certificate of confirmation of grant. That would involve, where the property has to be shared amongst many persons, the subdivision of the property, before the resultant subtitles are registered in the names of the beneficiaries. Transmission is not provided for under the *Law of Succession Act*, nor under the Probate and Administration Rules. It has nothing to do with the probate court, and it is carried out at the lands registry. It is, therefore, a process under land legislation."
21. Consequently, the applications dated 5th April, 2023 and 11th November, 2022 are partially allowed, giving rise to the following orders;
  - (i) The respondents are hereby directed to execute transmission documents and any other documents required at the Lands Registry for the purposes of effecting distribution of the deceased's estate in accordance with the rectified certificate of confirmation of grant issued 30th June, 2022 within forty five (45) days. The matter to be mentioned in court to confirm compliance and/or further directions on 2<sup>nd</sup> July, 2024
  - (ii) The respondents are hereby condemned to pay the costs of this application.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 9TH DAY OF MAY, 2024.**

.....  
**J.K. SERGON**

**JUDGE**

In the Presence of:-



C/Assistant – Rutoh

Mitey for the 1<sup>st</sup> Administrator

Miruka for the beneficiary – Christopher Cheluget

