



REPUBLIC OF KENYA



In re Estate of the Late Zakayo Kimutai Kotut (Deceased) (Succession Cause 168 of 2000) [2024] KEHC 7390 (KLR) (19 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7390 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 168 OF 2000**

JK SERGON, J

JUNE 19, 2024

IN THE MATTER OF THE ESTATE OF THE LATE ZAKAYO KIMUTAI KOTUT (DECEASED)

IN THE MATTER OF

KIMUTAI A NGETICH 1ST PETITIONER

ESTHER CHEPKOSKEI KOTUT 2ND PETITIONER

RULING

1. The application coming up for determination is a chamber summons dated 18th March, 2024, seeking the following orders;
 - (i) Spent
 - (ii) That the Deputy Registrar Kericho Law Court to execute transfer documents in favour of the Petitioner/ Applicant herein in respect of land parcel Kericho/Roret/829 on behalf of the Respondents herein so as to give effect to the certificate of confirmation issued by this Court on 20th July, 2022.
 - (iii) That this Honourable Court be pleased to give any necessary directions with regards to this application.
 - (iv) That the costs of the application herein be provided for.
2. The application is supported by grounds on the face of it and the supporting affidavit of Esther Chepkoskei Kotut 2nd Petitioner/Applicant herein.
3. The applicant avers that she is a beneficiary of the estate of the deceased who was the registered owner of land parcel L.R NO. Kericho/Roret/829 measuring 12.19 acres.



4. The applicant avers that sometime in the year 2000 or thereabout she petitioned for letters of administration of the estate of her deceased father and her brothers filed an objection disputing the mode of distribution.
5. The applicant avers that on 20th July, 2022 this Court made a ruling on the distribution of the estate to the effect that she ought to have 8.49 acres whereas the 1st petitioner shall have 3.70 acres, the applicant attached a copy of the certificate of confirmation of grant dated 20th July, 2022.
6. The applicant avers that she prepared and submitted all the relevant transfer forms to the land offices at Kericho, however, the respondent become uncooperative and it is therefore necessary that the Deputy Registrar be given authority to sign the forms which are requisite for the transmission of the estate of the deceased and to give effect to the grant.
7. The applicant avers that the respondent has declined, failed and/or neglected to execute all instruments to transfer the estate property to her. The applicant further avers that she is an administrator of the estate of the deceased and has the duty to render a true and just account of the estate of the deceased and to administer the estate in accordance with the law.
8. The applicant avers that unless the orders sought herein are granted she stands to suffer irreparable loss and damages which might not be adequately compensated in monetary terms.
9. The court directed the respondent to file a response to the application within seven (7) days. At the time of writing this ruling the respondent had not filed their response on the Case Tracking System platform.
10. I have considered the application and the sole issue for determination is whether to direct the Deputy Registrar to execute transfer 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 certificate of confirmation of grant. The answer is in the negative.
11. The certificate of confirmation of grant was issued on 20th July, 2022. It is almost two years since this Court issued a certificate of confirmation of grant and it is clear that there is an impasse in the administration of the estate giving rise to the instant application.
12. This Court has noted that in the application, the applicant urged this Court to issue orders compelling the Deputy Registrar to execute transfer forms for purposes of effecting transfer to the beneficiaries of the estate of the deceased and contemporaneously urged this Court to make necessary directions with regards to this application. In the circumstances, I find that there is no need to bother the Deputy Registrar to sign transfer documents as it is the duty of the administrators to execute them and where reluctant, fresh administrator (s) will be appointed to complete the process.
13. In *Paskarua 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.
14. *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."



15. Consequently, the application dated 18th March, 2024 is partially allowed, giving rise to the following orders;

(i) Kimutai A. Ngetich the 1st Petitioner/Respondent is 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 certificate of confirmation of grant issued 20th, July, 2022 within forty five (45) days. The matter to be mentioned in court to confirm compliance and/or further directions on 26/9/2024

(ii) The 1st Petitioner/Respondent is hereby condemned to pay the costs of this application.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 19TH DAY OF JUNE, 2024.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Miss Kitur for 2nd Petitioner 9

No Appearance for Motanya for 1st Petitioner

