



**In re Estate of the Late Wathuko Chongo alias Wathuko Chongo Wathuko (Deceased)
(Succession Cause 2171 of 2001) [2024] KEHC 8617 (KLR) (Family) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8617 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2171 OF 2001
HK CHEMITEI, J
JULY 11, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE WATHUKO
CHONGO ALIAS WATHUKO CHONGO WATHUKO(DECEASED)**

BETWEEN

NDERI WATHUKO CHONGO 1ST APPLICANT

PETER NDERI CHONGO 2ND APPLICANT

AND

WATHUKO NDERI CHONGO 1ST RESPONDENT

SERAPHINE WANJIKU WATHUKO 2ND RESPONDENT

RULING

1. In their Amended summons dated 14th October 2022 the Applicant prays for the following orders:-
 - (a) That the distribution schedule and or consent order of 6th May 2013 be rectified to reflect that the 1st household is allocated Bahati/Bahati/Block 643 while the 2nd household is to be allocated Bahati/Bahati /642 and 636.
 - (b) That the distribution schedule and or consent order of 6th May 2013 be rectified to reflect the correct land reference numbers of the properties/parcels of land.
 - (c) That valuers costs of Kshs. 464,000 is to be borne by the 2nd household.
 - (d) That the schedule of distribution of agricultural land annexed to supporting affidavit of Wathuko Nderi Chongo herein which schedule is consented to by all the administrators of the estate herein be adopted as the appropriate execution of the confirmation of grant certificate issued on 6th May 2022.



- (e) That the court be pleased to review orders dated 6th May 2022 condemning the 1st and 4th households to pay costs of Applicants.
2. The application is based on the grounds thereof and the sworn affidavit of Nderi Wathuko Chongo dated the same date.
 3. The said Applicant deponed that the application seeks among others to amend the proper description of the parcels of land so that the land registry would be properly guided in carrying out the registration exercise.
 4. The Applicant has also taken issue with land parcels numbers Nyandarua/Ol Aragwai /229 and Nyandarua/Mumui/334 respectively. According to the Applicants the said parcels though not registered in the name of the deceased ought to have been done so.
 5. The 1st parcel number Nyandarua/Olaragwai/229 is registered in the names of the mother of the 1st household while the Nyandarua /Mumui /334 has always been in the name of the Applicant Nderi Wathuko Chongo.
 6. Accordingly, there was need to amend the consent so as to include the above properties.
 7. As a matter of fact, the Applicant filed an application dated 20th February 2023 which sought among others that this court should proceed to determine the current application by way of viva voce evidence instead of written submissions. According to him issues concerning the acquisition of the above two properties and how they came to be registered in other names other than his will come out clearly.
 8. The application has been opposed by the Respondents vide the replying affidavits of Edwin Mwangi Wathuko both sworn 30th November 2022 in which he deponed that he had no objection to prayers numbers 1(a), 2 and 3 which basically indicates the proper title numbers of the properties as described in the consent of 6th May 2013.
 9. He was however opposed to the prayer dealing with the two parcels of land above, namely Numbers 229 and 334. According to him parcel number 229 was registered in the name of Tabitha Wanjiku, the deceased 1st wife who predeceased him. She died in 1994. He attached a copy of the title deed to that effect.
 10. The other parcel number 334 was registered in the name of Nderi Wathuko Chongo and not the deceased. That the two parcels have never been part of the deceased estate herein and he went on to state that the applications (which he attached) made by the Applicant at no time have they mentioned the two properties.
 11. He therefore prayed that the application be dismissed and if there were any issues raised by the Applicants then the same ought to have been raised in the Environment and Land Court and not in this cause.
 12. The court directed the parties to file written submissions which they complied. I have perused the same extensively as well as the authorities cited.
 13. What is clear is that the parties entered into an exhaustive consent dated 6th May 2013. Other than the description of the three properties which is not contested by the Respondents the two Nyandarua properties namely 229 and 344 did not form part of the consent.
 14. Since the Respondents have no problem with prayers (a) and (b) of the application the same are allowed as prayed.



15. Turning now to the issue of the two parcels it appears that land parcel number Nyandarua/Olaragwai/229 is not registered in the name of the deceased but one Tabitha Wanjiku. To the extent that it is not in the deceased name, this court has no jurisdiction to determine it however plausible the reasons advanced by the Applicant. It could be true that the deceased permitted it to be registered in the name of his wife for whatever reasons.
16. The proper place to argue the ownership or otherwise therefore ought to be the estate of the late Tabitha Wanjiku or at the Environment and Land Court. I need not add more for it may prejudice the parties in their next endeavours.
17. As regards Nyandarua/Mumui/344 if indeed the same is registered in the name of the 1st respondent, a fact which the Applicants did not contest, then the proper place to litigate is another forum possibly the Environment and Land court as well. Luckily the 1st respondent is still alive.
18. Finally, on the prayer concerning the payment of valuers costs of Kshs. 464,000 I do not see any new matter discovered by the Applicants to warrant a review. Prior to signing the consent, they were alive to these incurred costs and the issues contained in the current summons which I supposed includes the issues surrounding the two Nyandarua parcels above were within their knowledge.
19. I think the prayer basically is trying to evade the responsibility of not meeting the obligations as per the consent. Money was expended and the whole family agreed that the house that footed the bill ought to be compensated.
20. For the above reasons I have stated much to show that the application will partially succeed. Whether the two Nyandarua properties as submitted by the Applicant were fraudulently registered in the name of other parties and not the deceased ought to be argued in another forum but not within this estate.
21. The same goes with the Applicant's submissions that the late Tabitha Wanjiku was holding the above parcel of land in trust for the deceased and therefore the other beneficiaries.
22. Consequently, the application is allowed as hereunder.
 - (a) That the distribution and consent order of 6th May 2013 is rectified to read 1st household allocated Bahati/Bahati/643 and 2nd household Bahati/Bahati/642 and 636 respectively.
 - (b) Pursuant to (a) above the land reference number in the consent be rectified appropriately.
 - (c) The rest of the prayers are hereby disallowed.
 - (d) Costs in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 11TH DAY OF JULY 2024.

H K CHEMITEI.

JUDGE

