



In re Estate of Laban Khaemba Kisiang'ani (Deceased) (Miscellaneous Application 14 of 2016) [2024] KEHC 8196 (KLR) (5 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8196 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MISCELLANEOUS APPLICATION 14 OF 2016**

DK KEMEL, J

JULY 5, 2024

BETWEEN

ANTHONY WANJALA KHAEMBA 1ST OBJECTOR

DIMINA NEKESA 2ND OBJECTOR

AND

EVERLYNE NEKESA KHAEMBA PETITIONER

AND

BUSURU RICHARD MARK INTERESTED PARTY

LILIAN MILLY NEKESA KHAEMBA INTERESTED PARTY

AGNES KATHERINE KHAEMBA INTERESTED PARTY

MOSES WAFULA KHAEMBA INTERESTED PARTY

RULING

1. By Chamber Summons application dated 19th September 2023, the Interested Parties herein sought orders inter alia; that Ruth Nalyaka Khaemba, Agnes Katherine Khaemba, Moses Wafula Khaemba be enjoined as interested parties; that Lilian Milly Nekesa be appointed as one of the administrators of the estate of the deceased herein; that Ruth Nalyaka Khaemba, Agnes Katherine Khaemba, Moses Wafula Khaemba are the children of the deceased herein; that property known as LR. No. E. Bukusu/ N. Kanduyi/1561 be included as part of the assets of the estate of the deceased and that costs of the application be in the cause.
2. The application was premised on the grounds on the face of it and the supporting affidavit sworn by the 2nd Interested party herein on even date which is a reiteration of those grounds. The interested parties' gravamen is inter alia; that the interested parties are children of the deceased; that the applicants have never been involved in the appointment of the administrator as well as in the confirmation of



- the grant; that the administrator failed to include one of the assets namely L.R. No. E. Bukusu/N. Kanduyi/1561 wherein they occupy and have developed their homes with no objection whatsoever; that there is likelihood of risk visited upon the applicants if Lillian Milly Nekesa is not appointed as an administrator as well as them being locked out of the distribution of the estate; that the administrator concealed material information from the court.
3. In response to the application, the Petitioner filed a replying affidavit sworn on 17th November 2023, wherein she averred inter alia; that this court had delivered a judgement dated 28th July, 2023 where it directed the petitioner to file fresh summons for confirmation of grant and involve all the beneficiaries; that while she was in the process of reconciling with the order of the court the present application was filed; that the applicants were expected to file succession over the estate of their father before seeking to join these proceedings; that fresh succession proceedings are yet to be instituted thus making the Interested Parties application premature; that the application should be dismissed and that she be allowed to execute the orders of this court.
 4. In response to the Petitioner's replying affidavit, the 2nd Interested Party herein swore a further affidavit on 8th December 2023, wherein she averred that the allegations contained in the Petitioner's replying affidavit are false and unsubstantiated and that they are more focused on their inclusion as beneficiaries to the estate of the deceased herein since the Petitioner is hellbent on excluding them from the estate of the deceased since no proceedings have been served upon them to date.
 5. The application was canvassed by way of written submissions. Both parties filed and exchanged their respective written submissions.
 6. I have carefully considered the Interested Parties application, the affidavits tendered by all parties in support and in rebuttal of issues herein as well as their submissions and judicial precedence. I take the following view of the matter. I believe the only issue for determination is whether this court should issue the orders as sought by the Interested Parties.
 7. Does this probate Court have jurisdiction to determine the dispute framed in the application dated 19th September 2023? The starting point should be with the mandate of the probate Court. The probate Court is constituted for one sole purpose, distribution of the property of a dead person. The law which governs this area of distribution of assets of a dead person is the Law of Succession Act, cap 160, Laws of Kenya. The preamble says it is "An Act of Parliament to amend, define and consolidate the law relating to intestate and testamentary succession and the administration of estates of deceased persons, and for purpose connected therewith and incidental thereto."
 8. It is imperative for this Court to remind the Interested Parties that based on its judgement delivered on 28th July 2023, this Court was clear that revoking the grant issued on 5th May 1993 to the petitioner would push the parties far back and cause delay in the matter and that it found an order cancelling the certificate of confirmation of grant that was issued to the Petitioner herein on 19th May 1994 to be appropriate. The petitioner was thus directed to file fresh summons for confirmation of grant and include all the beneficiaries. The petitioner had been granted thirty days to do that and that she has not done so. The petitioner should comply failing which this court will be compelled to appoint any of the family members as an administrator so that the distribution of the estate can be concluded. It is also noted that the interested parties have brought up the issue of a new property namely E.Bukusu/ N.Kanduyi/1561 which is claimed to belong to the deceased herein and in which the petitioner has declined to include as part of the estate. I have seen the copy of the green card and certificate of title which has the name of the proprietor as Laban Khaemba Samuel which is similar to the name of the deceased as described by the petitioner while petitioning for grant of letters of administration. The petitioner in her replying affidavit seemed to insinuate that the interested parties should have instituted



succession over the said land. This was of course not proper as it was appropriate to put all the assets under one roof for ease of distribution. The interested parties have maintained that they have been in occupation of the said to date with the full knowledge of the petitioner and do not understand why she has not involved them in the proceedings. It would appear to me that the petitioner and the interested parties had bad blood for each other and that the petitioner felt that they should sort themselves. Of course, this was wrong on the part of the petitioner as she ought to have included the said asset plus the interested parties as beneficiaries. As the petitioner had been ordered to include all the beneficiaries, this court should now give her one more chance to do so. The request by the interested parties to be made as one of the administrators at this stage might not be appropriate in view of the bad blood existing between the parties herein. I will give the administrator one chance to show leadership by filing the requisite summons for confirmation of grant which include all beneficiaries including the interested parties and their respective shares failing which the court proceed to appoint an administrator for the estate. To this extent, the interested parties' application succeeds only in terms of prayer No. 5 thereof.

9. In the result, it is my finding that the interested parties application dated 19.9.2023 partially succeeds in terms of prayer No. 5 thereof. The property known as E.Bukusu/N/Kanduyi/1561 which is in the name of the deceased forms part of the estate for distribution among the beneficiaries. The petitioner is granted a further thirty days to file fresh summons for confirmation of grant and include all beneficiaries failing which the court will proceed to appoint new administrators. Matter to be mentioned on 19.8.2024 to confirm compliance. Each party to bear their own costs.

It is so ordered.

DATED AND DELIVERED AT BUNGOMA THIS 5TH DAY OF JULY, 2024.

D. KEMEI

JUDGE

In the presence of

No appearance for Objectors/ Respondents

No appearance Masengeli for Petitioner/ Respondent

Macharia for Interested Parties/Applicants

Kizito Court Assistant

