



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Chuba Bakari Hamisi (Deceased) (Succession Cause
436 of 2004) [2024] KEHC 14169 (KLR) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 14169 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 436 OF 2004**

G MUTAI, J

OCTOBER 24, 2024

IN THE MATTER OF THE ESTATE OF CHUBA BAKARI HAMISI (DECEASED)

BETWEEN

CHRISTINE KIMWANA CHUBA 1ST APPLICANT

CHARLES CHUBA 2ND APPLICANT

**MINORS SUIING THROUGH THEIR MOTHER AND NEXT FRIEND
JOSPHINE WANJIRU NJUKI**

AND

ASHA NIFUSI CHUBA 1ST RESPONDENT

ALI CHUBA 2ND RESPONDENT

RULING

Introduction

1. This Court (per Onyiego, J) delivered a ruling on 31st January 2022 vide which it held in paragraph 37 as follows:-

“For the above reasons stated, the claim by the respondents that such applicants are children born out of wedlock and hence not entitled to a share is not tenable. To that extent, the application is hereby allowed with orders that:-

- a. The applicants are hereby declared as children to the late Shauriqy Chuba Bakari and, therefore, entitled to inherit 9.21% share due to Shauriqy’s estate from the estate of his father, Chuba Bakari Hamisi;
- b. The applicants are entitled to 9.21% in respect of each asset listed in the estate of Chuba Bakari Hamisi;



- c. The applicants are entitled to their father's share (9.21%) in equal share;
- d. The share of the second applicant, Charles, who is a minor, shall be transferred and registered in the name of his mother, Josephine Wanjiru Njuki, to hold in trust and for the benefit of the said minor, until he attains the age of majority;
- e. The administrators are directed to forthwith transfer the said shares, as directed above, and where it is not physically possible for any property to be so divided amongst all entitled beneficiaries, the same shall be valued by a mutually agreed value and then sold in a public auction, and the proceeds realized therefrom be shared amongst the beneficiaries as ordered above;
- f. For the avoidance of doubt, the applicants are entitled to 9.21% out of the estate of Chuba Bakari Hamisi in respect of the following properties, valued at Kes.176,100,000.00 and identified as follows:-
 - i. Plot No. 1763 MN/III;
 - ii. Plot No.1756 MN/III;
 - iii. Plot No. 388, 389, 390 and 391 MN/III;
 - iv. Land and house Plot No.1059 and 3287 MN/III;
 - v. Plot No. Kilifi/Mtwapa/376; and
 - vi. Houses without land on Plot Nos.807, 2888 and 535/III.

2. The respondent/applicants were aggrieved by the determination and filed an appeal. As of the date hereof, the Court of Appeal has not delivered its decision on the appeal. There is, however, no stay of execution of this Court's ruling.

Notice of Motion Dated 29th November 2023

3. Vide an application for stay of execution dated 29th November 2023, the respondent/applicant sought to have the warrants issued on 22nd November 2023 against them stayed pending the determination of an appeal filed by them at the Court of Appeal against the decision above stated.
4. After hearing the parties, this Court found no merit in the latter application and dismissed it with no orders as to costs.

Notice of Motions Dated 19th April 2024

5. The respondents/applicants thus filed this application dated 19th April 2024, vide which the following four orders are sought:-
 1. Spent;
 2. That there be a stay of the warrant of arrest issued against the respondents/applicants herein pending the hearing of this application;
 3. That this Court be pleased to direct that compliance with the judgment and ruling of this Court has been completed and that this matter be closed; and
 4. That the costs herein be provided for.



6. The respondents/applicants contend that the Court found that the applicants/respondents were entitled to a 9.21% share of the Estate of Chuba Bakari Hamisi (deceased). It was further contended that the applicants/respondents sought to transfer all the properties forming the late Chuba Bakari Hamisi's estate. The respondents/applicants urged that such transfer was impossible as some properties had been disposed of or had otherwise been distributed and that the distribution was done fairly. It was stated that the applicants/respondents were issuing threats and demanding more than they were entitled to and that warrants of arrest were hanging over the heads of respondents/applicants.
7. In her affidavit sworn on 19th April 2024, Asha Nifusi Chuba deposed that Plot Nos.1763/III/MN and 1756/III/MN were sold with the proceeds being distributed. She accused the applicants/respondents of wanting more than the 9.21% share of the estate due to them. Ms Chuba deposed that the applicants/respondents were harassing her for no reason. She urged that the matter be marked as settled.

Replying Affidavits of Josephine Wanjiru Njuki

8. In her replying affidavit, Ms Josephine Njoki, the mother of the applicants/respondents and their representative, averred that the respondents/applicants had not fully complied with the orders issued by the Court on 31st January 2022. For that reason, the application should be dismissed.
9. She deposed that Plot Nos.388, 389, 390 and 391/MN/III were consolidated and subdivided, and the applicants/respondents got a title for Plot No. 9594/III/MN. She, thus, stated that paragraph 37(f) (iii) of Onyiego, J's ruling, had been fully complied with.
10. Ms Njuki also confirmed that paragraph 37 (f) (v) of the ruling had been complied with. As a result, a subdivision, Title No. Kilifi/Mtwapa/5038 was allocated to them. She deposed that they had been unable to transfer it to themselves as an express order from the Court was required.
11. She further stated that the plots listed in paragraphs 37(f)(i) and (ii) were sold. The applicants/respondents were, however, apprehensive as no statement of account had been provided on the proceeds of the sale, the expenses payable, and the amount due to them.
12. The deponent stated that there was partial compliance with paragraph 37(f) (iv) of the ruling in so far as some rent proceeds had been forwarded to them. However, she stated that no statement of account showing how much rent the houses on the premises fetch, the number of tenants, and the applicants/respondents' shares had been provided to them. She further stated that they were getting rent proceeds less Kes.8,000.00, said to be rent due from them, which was being deducted as monthly rent, calculated from January 2014. She, therefore, sought a refund of Kes.912,000.00, which had been deducted from them.
13. Lastly, she stated that nothing had been done regarding houses without land on Plot Nos. 807, 2888 and 535/III.
14. In the circumstances, she urged that this Court find that there hadn't been full compliance with the orders issued by the Court on 31st January 2022. She prayed that I direct the respondents/applicants to provide a statement of the proceeds of the sale of Plot Nos. 1763/III/MN and 1756/III/MN, statement of the number of tenants and rental income accruing from houses on Plot No. 1079 and 3287/III/MN and the number of tenants currently in occupation of the houses thereat, direct the respondents/applicants to remit to them Kes.912,000.00 withheld as rent and state the mode of distribution or statement of account in respect of houses without land on Plot Nos 8077, 2888 and 535/III.



Oral Submissions of the Parties

15. The application was canvassed through oral submissions on 16th July 2024.
16. Mr Magolo, learned counsel for the respondents/applicants, submitted that they were seeking final closure of the matter following the ruling of this Court delivered on 31st January 2024. He urged that the respondents/applicants had fully complied with the Court's directions and that the matter should now be closed. Counsel stated that the Supporting affidavit showed that there had been full compliance, while the Replying Affidavit of Ms. Josephine Njoki confirmed that substantial compliance had occurred.
17. Counsel stated that what was stated to be non-compliance was the provision of a statement of account, chiefly in regard to tenancies and not much else. Regarding payment of rent by the applicants/respondents, it was urged that they want to live in the deceased's house without paying rent, which he submitted was contrary to the finding of the Court. Mr Magolo submitted that the house belonged to the deceased and that the applicants/respondents' father had no properties of his own. He urged that the existing warrants could be used to blackmail the respondents/applicants. Counsel thus prayed that I allow the application.
18. The applicants/respondents' counsel, Mr. Mwanzia, opposed the application. Mr Mwanzia submitted that partial compliance isn't full compliance. He urged that it wasn't true that the contempt proceedings prevented the respondents/applicants from fully complying. He stated that prior to filing the application for contempt, a letter was written to the respondents/applicants' counsel, which letter was ignored. Counsel said they had difficulty transferring two properties and sought the court's help to complete them.
19. Mr Mwanzia submitted that no proper accounts had been filed. He urged that his clients need to know what expenses had been incurred and what their entitlements were. It was the counsel's submission that the instant application was filed in this Court after the respondents/applicants failed to get a stay at the Court of Appeal. he urged that what had been deducted as rent ought to be paid back to them. Thus, I was urged to dismiss the application and give an early hearing date for the application seeking committal of the respondents/applicants for contempt of Court.

Analysis and Determination

20. It is evident that what is before the Court is the determination of compliance with the ruling delivered on 31st January 2022. To do this, I must consider the ruling of his Lordship, Judge Onyiego and decide whether it has been adhered to.
21. My reading of paragraph 37 (e) of the judgment is that the administrators were required to transfer the estate to the beneficiaries in accordance with the shares identified by the Court. The father of the applicants/Respondents was entitled to 9.21% of the estate. The Court, in its wisdom, ordered that where it was not physically possible to share particular asset or assets, the administrators were required to value and sell the same by public auction, and the proceeds realized therefrom would then be distributed in the ratios identified by the Court.
22. The administrators of the estate of the deceased had a duty under Section 83 of the [Law of Succession Act](#) to complete the distribution of the estate within 6 months. They also had a duty to provide a statement of account. The said section states as follows:-

Personal representatives shall have the following duties



- (a) to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;
- (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
- (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
- (d) to ascertain and pay, out of the estate of the deceased, all his debts;
- (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
- (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.
- (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (i) to complete the administration of the estate in respect of all matters other than continuing trusts and, if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.

(emphasis added).

23. It is evident that the administrators have not fully complied with their obligations under the Act and also pursuant to the directions of the Court. I agree with the counsel for the applicants/respondents that partial compliance isn't the same thing as full compliance. I note the following regarding compliance:-

1. There has been full compliance with paragraph 37(f) (iii) as Plot Nos 388, 389, 390 and 391 MN/III were sold, with the proceeds being shared as ordered by the court;
2. There has also been full compliance with paragraph 37(f) (v);
3. There is partial compliance with paragraphs 37(f) (i) and (ii). A statement of account is, however, needed.
4. There has been no compliance with paragraphs 37(f), (iv), and (vi), as none of the properties have been sold or shared out



24. The Court in *re Estate of the Late Mwaura Makuro (Deceased)* [2021] eKLR stated as follows regarding the need for administrators to provide accounts:-

“ 32. The production of accounts is a key component of the administration process of a deceased person’s estate. From the moment a grant is issued to a personal representative of a deceased person, the grant holder becomes responsible to the Court in the carrying out of the duties of administrator. Accounts are an accountability tool that will tell the Court whether the administrator has been faithful to the role entrusted to him or her. When an administrator fails to file accounts as required, questions as to the integrity of the process are bound to arise as in the present case. The law has empowered the Court on either of its own motion or on the application of any interested party in the estate, to order an administrator to produce a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.”

25. The Court did not envisage a situation where the administrators would hold the properties and collect rent. The same should either have been sold or shared out. The fact that this has not been done to date amounts to a dereliction of duty by the administrators.

26. Regarding the issue of rent, I do not agree with the administrators that rent should be payable from the applicants/respondents. That can only happen after the distribution of the estate is completed. It is entirely possible that the distribution of the estate could have resulted in their ownership of the unit they presently occupy. The fact that the distribution has not been completed is directly attributable to the administrators. They cannot punish the applicants/respondents for their failures. Even if it were fair to seek payment of rent, such an action would be prospective and not retrospective.

27. In the circumstances and to complete the distribution of the estate I order as follows:-

1. The respondents/applicants are hereby ordered to provide to the Court a statement of account, setting out what amounts were received upon sale of Plot No. 1763 MN/III & Plot No. 1756/MN/III, expenses incurred and what sums are payable to the applicants/respondents within 30 days of the date hereof;
2. The Administrators are further ordered to sell Plot Nos. 1059 and 3287/MN/III within 90 days of the hereof and share proceeds in the ratios identified by the Court. However, the applicants/respondents shall be reimbursed Kes.912,000.00, which was wrongfully deducted from them, from the sale proceeds. For the avoidance of doubt, there shall be no further deductions of any sums due to the applicants/respondents on account of rent;
3. Houses without land on Plots No. 807, 2888 and 535/III shall similarly be sold within 90 days of the date hereof, and proceeds shared out in the ratios identified by the Court;
4. The Land Registrar Kilifi County is hereby directed to register Title No Kilifi/Mtwapa/5038 in the names of the applicants/respondents within 30 days of the date hereof;
5. In the interest of justice and to allow the respondents/applicants to comply with the Court orders, I suspend the warrants of arrest issued against the respondents/applicants for 90 days; and
6. As this is a family matter I make no order as to costs.



28. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 24TH DAY OF OCTOBER 2024. DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Mr Magolo, for the Respondents/Applicants;

Mr Mwanzia, for the Applicants/Respondents; and

Arthur - Court Assistant.

