



In re Estate of Ian Gershom Maranga (Deceased) (Succession Cause E785 of 2020) [2024] KEHC 12471 (KLR) (Family) (17 October 2024) (Ruling)

Neutral citation: [2024] KEHC 12471 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E785 OF 2020
HK CHEMITEI, J
OCTOBER 17, 2024
IN THE MATTER OF THE ESTATE OF IAN GERSHOM MARANGA (DECEASED)**

BETWEEN

ENOCK NYANCHOGA MONARI INTERESTED PARTY

AND

**ADMINISTRATORS OF THE ESTATE OF IAN GERSHOM
MARANGA 1ST RESPONDENT**

PHYLLIS CHRISTABEL WAMBURA MARANGA 2ND RESPONDENT

AND

NATIONAL TRANSPORT AND SAFETY AUTHORITY . INTERESTED PARTY

RULING

1. This ruling relates to the application dated 26th April, 2023 filed by the Applicant, Enock Nyanchoga Monari, seeking for orders that:-
 - (a) Spent.
 - (b) The honourable court be pleased and does hereby issue an order joining the interested party/ applicant in the instant suit as an interested party.
 - (c) The honourable court be pleased and does hereby rectify, review and or vary the certificate of confirmation of grant issued on or about 18th October, 2022 and remove the motor vehicle KCN 862Y from the list of properties issued to the beneficiary.



- (d) The honourable court be pleased and does hereby issue an order removing, striking off and/or ceasing the imposition of any and all caveats and restriction by the 1st and 2nd Respondents on the motor vehicle KCN 862Y.
 - (e) The honourable court be pleased and does hereby issue any other further orders it deems just and fit to issue.
 - (f) Costs of the application be provided for.
2. The application is supported by affidavit sworn by Enock Nyanchoa Monari on 26th April, 2023. He avers inter alia that he participated in the auction carried out by the 3rd Respondent on 11th May, 2021 where he purchased motor vehicle registration number KCN 862Y at Kshs. 2, 731, 001/= . The vehicle was thereafter transferred to him upon written instructions dated 12. 5. 2021 by the 3rd Respondent to the Manager of Valuers Yard, Thika Road. He has been in possession of the motor vehicle since 12th May, 2021 to date.
 3. That the caveat imposed by Archer & Willock Advocates on 14th December, 2022 came to his attention on 24th April, 2023. The certificate of confirmation of grant dated 18th October, 2022, which lists motor vehicle registration number KCN 862Y, as part of the deceased's estate was issued long after the vehicle had already been transferred from the 3rd Respondent (financier) to him. At the time of filing the petition for grant of letters of administration, the vehicle had already been repossessed by the 3rd Respondent and was in storage at Valuers Yard. The vehicle should not therefore be listed as part of the deceased's estate.
 4. The application is supported by replying affidavit sworn by Jackson Nyaga, Legal Counsel for the 3rd Respondent. He avers inter alia that the vehicle was jointly registered with NCBA on account of a secured creditor and financier's interest. The vehicle was repossessed sometime in the year 2021 and stored at Valuers Yard, Thika. Inspection and valuation were conducted by Craftic Auto Assessors & Valuers Limited on 15th April, 2021. The vehicle was one of the vehicles advertised for public auction on 21st April, 2021 in the Standard Newspaper. The applicant presented the highest bid of Kshs. 2,731, 000/= on 11th May, 2021 and the vehicle was released to him vide correspondence dated 12th May, 2021 done by the 3rd Respondent to the Manager of Valuers Yard, Thika Road.
 5. The application is opposed vide grounds of opposition dated 24th July, 2023, filed by the 1st Respondent (Phyllis Christabel Wambura Maraga and Francis Kario Kinyua) and premised on the grounds that:-
 - 1) The instant application is misconceived, bad in law and otherwise an abuse of court process.
 - 2) This honourable court is functus officio and therefore lacks the requisite jurisdiction to determine this matter.
 - 3) The alleged transfer of the said motor vehicle happened after the demise of the deceased and is therefore highly questionable and marred with substantive and procedural irregularities.
 - 4) When the petition for grant of letters of administration were filed, the deceased was the registered owner of the motor vehicle.
5. The application should be dismissed with costs.



Analysis and Determination

6. I have gone through the application and the responses thereto and it is evident that the deceased died on 15th August, 2020. The petition for grant of letters of administration dated 24th February, 2021, was filed on 2nd July, 2021 and the Kenya Gazette Notice Number 12540 was published on 19th November, 2021. The grant of letters of administration intestate was issued to Phyllis Christabel Wambura Maraga and Francis Kario Kinyua on 24th January, 2022. Summons for confirmation of grant dated 8th September, 2022 were filed on 12th September, 2022 and a certificate of confirmation of grant was issued to Phyllis Christabel Wambura Maraga and Francis Kario Kinyua on 18th October, 2022.
7. NCBA, the 3rd Respondent, repossessed the vehicle sometime in the year 2021. The inspection and valuation were done on 15th April, 2021. Advertisement for public auction was done on 21st April, 2021 with the deadline for receiving bids being 28th April, 2021.
8. The public auction was then conducted on 11th May, 2021 where the applicant, having submitted the highest bid, purchased the vehicle at Kshs. 2,731, 000/= . The vehicle was released to the applicant on 12th May, 2021 and he obtained its insurance on 13th July, 2021.
9. The 3rd Respondent issued instructions to the 1st interested party, vide letter dated 4th June, 2021, to discharge the vehicle and transfer it to the applicant under forced transfer.
10. From the above chronology of events backed by documentary evidence I find that the motor vehicle registration number KCN 862Y was encumbered to the 3rd Respondent, NCBA, at the time of the deceased's demise. As such, it was not the deceased's free property. To this effect therefore and based on the paper trail and chronology of events enumerated above the sale by way of public auction and transfer of the vehicle to the applicant was valid and it should not form part of the deceased's estate in the certificate of confirmation of grant issued on 8th September, 2022.
11. Consequently, I find merit in the application. The Respondent in any case has not opposed the fact that the deceased had borrowed money and used the said vehicle as a collateral.
12. In the premises the application is allowed in terms of prayers (b), (c) and (d) above.
13. Costs shall be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 17TH DAY OF OCTOBER 2024.

H K CHEMITEI

JUDGE

