



**In re Estate of Isaiah Begi Gesicho (Deceased) (Succession Cause 493 of 1985)
[2024] KEHC 11627 (KLR) (Family) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11627 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 493 OF 1985
HK CHEMITEI, J
OCTOBER 3, 2024
IN THE MATTER OF THE ESTATE OF ISAIAH BEGI
GESICHO (DECEASED)**

BETWEEN

GLADYS KWAMBOKA GESICHO 1ST PROTESTOR

RACHAEL GESICHO KASAMANI 2ND PROTESTOR

AND

JUMA GETANDA GESICHO 1ST ADMINISTRATOR

EVANCE KAMBUNI GESICHO 2ND ADMINISTRATOR

DAVID OGEA GESICHO 3RD ADMINISTRATOR

ROBERT OUKO GESICHO 4TH ADMINISTRATOR

RULING

1. This ruling relates to the applications dated 30th October, 2014 and 10th April, 2023.
2. The application dated 30th October, 2014, filed by the Applicant, David Ogega Gesicho, against Robert Ouko Gesicho is seeking for orders that:
 - i. The Officer Commanding Station (OCS) Kisii Police Station, Kisii County to stop the Respondent and Mt. Zion Church in Kisii from continuing with construction work on LR No. 568 Central Kitutu Mwamosioma Kisii County and to provide security during the removal of unauthorized/illegal structures and the eviction of Mt. Zion Church Kisii from the said parcel LR No. 568 Central Kitutu Mwamosioma Kisii County.



- ii. The OCS Kitale Police Station in Trans Nzoia County to stop the Respondent and Enock Simila Mayenga, Joseph Kegoko and another from interfering and intermeddling in LR No. 5766 Tulwet Farm Parcel No. 320 in Trans Nzoia County.
 - iii. The OCS Langas Police Station to stop the illegal occupation of Parcel No. 15 of LR No. 8500 Langas Farm Eldoret also appearing as Langas Block IV Eldoret Plot Numbers 15, 579, 580, 581, 582, 583, 660, 662 in Uasin Gishu County.
 - iv. It be declared by the court that the transfer of land certificate LR 1223 Nandi Kamobo, Nandi County to Reuben Onsongo and Namigwa Matara on the 3/10/2003 and the issuance of a title deed on the same date is null and void and that the OCS Kapsabet Police Station be directed to evict the illegal occupants of LR 1223 Nandi Kamobo, Nandi County.
 - v. The Respondent and/or his agents or anybody acting on his behalf be permanently restrained from intermeddling, alienating, selling or dealing with the estate of the Late Isaiah Begi Gesicho.
3. The application is supported by affidavit and further affidavit sworn by David Ogega Gesicho on 30th October, 2014 and 3rd July, 2024 respectively. He avers inter alia that the Respondent is intermeddling with the deceased's estate and is in contempt of court orders issued by this court on 9th June, 2009 and extended on 22nd September, 2009 and severally thereafter barring him from intermeddling with the deceased estate.
 4. The Applicant cited various instances of such intermeddling which have been reported at various police stations which include erection of illegal structures on LR 568 Central Kitutu Mwamosioma Kisii County reported at Kisii Police Station by David Ogega Gesicho in 2010, OB No. 26/19/03/2011 reported at Kisii Police Station by David Ogega Gesicho on 19th March, 2011, OB No. 22/31/03/2011 reported at Kisii Police Station by Juma Gesicho on 31st March, 2011, Sale and felling of trees between 25th April, 2012 and 30th May, 2012 reported at Kisii Police Station in 2012, OB No. 28/10/02/2013 reported at Kisii Police Station by David Gesicho on 10th February, 2013, interference in LR No Bassi/Bogetario 11/481 Kisii County reported at Kisii Police Station by Mary Gesicho in 2014, OB No. 28/9/11/2009 reported at Langas Police Station Uasin Gishu County on 9th November, 2009 reported at Kitale Police Station Trans Nzoia County on 11th November, 2009 by Juma Gesicho, OB No. 28/11/11/2009 reported at Kitale Police Station Trans Nzoia County on 11th November, 2009 by Juma Gesicho and OB No. 50/04/03/2010 reported at Kapsabet Police Station Nandi County on 4th March, 2010 by David Ogega Gesicho.
 5. He averred that the OCSs of the various police stations aforementioned have indicated that they are unable to enforce the court orders because they are not specifically directed to them.
 6. Further that the Respondent refused to abide by the resolutions of the family meeting held on 25th March, 2011 and the minutes of this meeting were never availed to the Applicants.
 7. That Justice Musyoka, on 22nd September, 2014, ruled that all the 4 sons to the deceased be administrators to his estate and all the deceased's daughters be included as beneficiaries to his estate and that the estate be distributed within 45 days as per the amended grant. However, he stated that the estate cannot be distributed without curing the Respondent's intermeddling with the deceased's estate. He produced evidence to support his application in the further affidavit sworn on 31st July, 2024 and requests that a mental assessment be conducted on the Respondent.



8. The application is opposed vide replying affidavit sworn by Robert Ouko Gesicho on 21st March, 2024. He states inter alia that he is one of the beneficiaries and administrators of the deceased's estate. The Applicant is his brother, beneficiary and co – administrator of the deceased's estate. He deponed that the Applicant has not produced any evidence to back his assertions that he is intermeddling with the deceased's estate. The deceased's estate is pending distribution because the beneficiaries failed to agree on the mode of distribution.
9. He deponed that the court, on 25th October, 2022, ordered each of the administrators to file their proposed modes of distribution and the administrators to sign on the one they agree with. He is the only administrators that has filed, on 31st October, 2022, the proposed mode of distribution. He Urged the court to distribute the deceased's estate and to dismiss the application dated 30th October, 2014.
10. The Applicant did not file written submissions. The Respondent has filed written submissions dated 29th March, 2024 placing reliance on the following:
 - a. Section 45 of the *Law of Succession Act* which provides, "(1) Except so far as expressly authorized by this Act or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession of, dispose of, or otherwise intermeddle with any free property of a deceased person. (2) Any person who contravenes the provisions of this section shall (a) be guilty of an offence and liable to a fine not exceeding ten thousand or to a term of imprisonment not exceeding one year or to both such fine and imprisonment."
 - b. *Re Estate of Mwaura Makuro (Deceased)* [2021] eKLR where the courts stated as follows: "It is settled then, that, being an offence punishable by a fine or imprisonment, intermeddling must be proved beyond a preponderance of evidence. In Re Estate of Dr. John Muia Kalii (deceased) Machakos HCCC Succession Cause No. 81/1995 Hon. Mweke J. held that: "Since intermeddling is a criminal offence evidence to support an allegation of it must be very strong."
 - c. *Giella -vs- Cassman Brown & Co. Ltd* [1973] EA 358 where the court set down the three conditions that an Applicant should establish for a court to grant an injunction as follows: "1. An Applicant must show a prima facie case with a probability of success. 2. An interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury which would now adequately be compensated by an award of damages. 3. If the court is in doubt, it will decide an application on the balance of convenience."
 - d. *Re Estate of Malakwen Tarus* [2020] eKLR where the court stated that, "...it would follow that no justification has been made for the issuance of the restraining orders sought by the Applicants."
11. The application dated 10th April, 2023, filed by Dr. Elvis E.N. Abenga (Counsel for Gladys Kwamboka Gesicho -1st Protestor – and Rachael Gesicho Kasamani – 2nd Protestor); seeks for orders that:
 - i. Spent.
 - ii. This honourable court preserves the Estate by issuing orders restraining the administrators, their agents and/or servants from interfering with the Estate pending the issuance of a certificate of confirmation of grant.
 - iii. Any further or other relief the honourable court may deem just to grant in interests of justice.
12. The application is supported by affidavit sworn by Dr. Elvis N. Abenga on 10th April, 2023. He avers inter alia that Robert Ouko Gesicho (the 4th administrator) is in the process of tampering with the



- Estate by selling part of the Estate and otherwise building and engaging in construction in the other part of the Estate without authority from the court and without a certificate of confirmation of grant.
13. The application is opposed by replying affidavit sworn by Robert Ouko Gesicho sworn on 5th June, 2023. He avers inter alia that the protestors are his sisters and beneficiaries of the deceased's estate. They have not produced any evidence to prove that he is intermeddling with the deceased's estate. The deceased's estate is pending distribution because the beneficiaries failed to agree on the mode of distribution. The court, on 25th October, 2022, ordered that each of the administrators to file their proposed modes of distribution and the administrators to sign on the one they agree with. He is the only administrators that has filed, on 31st October, 2022, the proposed mode of distribution. He urged the court to distribute the deceased's estate and to dismiss the application dated 10th April, 2023.
 14. The 1st and 2nd protestors have filed written submissions dated 28th July, 2023 placing reliance on the following:
 - a. *Gitau & 2 others vs Wandai and 5 others* (1989) KLR 23 where the court stated as follows: "... I agree with the finding of the Honorable Judge in the way he defined intermeddling, however, I would like to add any act that purports to dispossess or result into wastage of deceased estate or causes loss or damage or makes it impossible for administrator to administer the deceased's estate by a person who is not authorized by the *Law of Succession Act* or by any written law or by a grant of representation under the said Act is an act of intermeddling with free property of a deceased person..."
 - b. *Paul Gitau Wanjau vs Gathuthis Tea factory Company Ltd & 2 others* (2016) eKLR where the court stated as follows: "Where any doubt exists as to the Applicants' right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right... Thus, the court makes a determination as to which party will suffer greater harm with the outcome of the motion. If the Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance on convenience lies."
 15. The 4th administrator has filed written submissions dated 22nd August, 2023 placing reliance on the following:
 - a. Section 45 of the *Law of Succession Act* (supra).
 - b. *Re Estate of Mwaura Makuro* (Deceased) [2021] eKLR (supra).
 - c. *Giella -vs- Cassman Brown & Co. Ltd* [1973] EA 358 (supra).
 - d. *Re Estate of Malakwen Tarus* [2020] eKLR (supra).

Analysis and Determination

16. I have gone through the applications dated 30th October, 2014 and 10th April, 2023, the responses thereto and the rival submissions filed by the parties. I have also perused the court record and the history of this matter.



17. It is from the record and admitted by the parties that my brother Musyoka J on 22nd September 2014 made several orders including order number 4 which stated that

“ The administrators are hereby given 45 days to distribute the estate.”
18. To date what is evident is that there are two sets of documents which the parties have filed in compliance with the above order. These include an affidavit by David Ogega Gesicho sworn on 9th February 2015 giving a mode of distribution on his own behalf.
19. Then there is a consent of mode of distribution signed by some of the beneficiaries on 9th November 2014. Again it appears there was no unanimity over the mode of distribution.
20. The applications before me are therefore putting the cart before the horse. All that the Applicants ought to have done was to file a proper mode of distribution as directed by the court. In the event of any disagreement which is already evident then the court will ordinarily give directions.
21. The issue of intermeddling or not by either of the parties or third parties for that matter will only be resolved once the estate is distributed. Otherwise this circus will continue at infinitum unless the court stumps its authority.
22. Needless to state that the estate has suffered by virtue of egos from the beneficiaries especially the administrators. It is inconceivable that 10 years or thereabouts after Justice Musyoka gave the directions the parties are still unable to agree and seeking further orders against each other.
23. Consequently, this court declines to grant orders prayed in both applications and direct that the parties should within 30 days from the date herein file an agreed mode of distribution and or separate mode of distribution.
24. Each party shall meet its own costs.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 3RD DAY OF OCTOBER 2024.

H K CHEMITEI

JUDGE

