



In re Estate of Munyua Mbeke (Deceased) (Succession Cause 59 of 2016) [2023] KEHC 1617 (KLR) (10 March 2023) (Ruling)

Neutral citation: [2023] KEHC 1617 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 59 OF 2016
MM KASANGO, J
MARCH 10, 2023
IN THE MATTER OF THE ESTATE OF MUNYUA MBEKE
(DECEASED)**

RULING

1. The estate of Munyua Mbeke (deceased) has two properties namely; Kiambaa/Thimbugua/2097 and Kiambaa/Thimbugua /2098. The grant issued hereof was confirmed on September 16, 2016. Although distribution of the estate was undertaken, the beneficiaries are at odds on how their estate should be sub-divided. This is despite a consent (of the beneficiaries) being recorded on October 23, 2018 that survey be conducted by the Kiambaa County surveyor. Even though that survey was undertaken by C N Kimani, a surveyor of Kiambaa sub-county there is still disagreement. This ruling is intended to determine how the estate will be sub-divided.
2. There are two survey reports filed in this matter. The first is by the surveyor of Kiambaa sub-county C N Kimani dated December 3, 2018 and the second in by a licensed land surveyor, Wallace N Mbugua dated December 3, 2021.
3. The first surveyor is supported by Teresia Wanjiku Kimani, Esther Njoki Murigi, Grace Njeri Kanyoro and David Mbeke Kanyoro. It is opposed by James Ngige Warobo. James presented the second survey report by the licensed surveyor. The second report is not supported by any other beneficiary.
4. From this outset, I wish to state that the first report by the Kiambaa sub-county surveyor implemented the distribution of the estate as per the confirmed grant and the judgment of September 16, 2016. The second report countervailed the confirmed grant by subdividing the estate contrariwise to the confirmed grant. This is despite the fact that no appeal has been filed and determined setting aside the court' distribution of this estate.
5. For the above reason, this court upholds the first survey report.
6. I have considered the parties submissions on the pros and cons of both reports. I will endeavor to consider in depth the objection raised by James.



7. James stated that the second report “contains the professionally done and completed work of a licensed surveyor.” He faulted the first report on the ground that the sub-county surveyor “did not give a professionally done technical proposal for a sub division.” James by his submission stated that the first report showed the surveyor work was not completed unlike the second report where the work was completed.
8. I am unable to discern any incompleteness of the first report. If the reason advanced by James as to why he submits the first report was incomplete or was unprofessional is because the subdivision was titled “proposed”, I would respond by stating that similarly, the second report is also a proposed subdivision.
9. It also matters not that the parties who are in support of the first report initially did not support the sub-county surveyor’s work. That is not material in determining how the estate should be sub-divided.
10. It also did not advance James opposition to the first report to say that it lacked “technical input” or was not supported “preliminary work”. What James meant by “technical input” and “preliminary work” is not clear to the court.
11. The main reason I am unable to uphold the second report presented by James is because the surveyor, contrary to the confirmed grant, amalgamated the two properties of the estate then proceeded to subdivide the amalgamated land between the beneficiaries. In so doing that surveyor arrogated himself the power of appeal from this court’s order of confirmation of the grant. That survey report distorted this court’s determination on distribution of the estate.
12. It is for that reason and because the first report complied with the confirmation of grant that I uphold the first report. That report shall be the one to guide the subdivision of this estate. It follows that any structures which interfere with that distribution shall be demolished to ensure conclusion of this long-protracted administration of deceased’s estate.
13. Notwithstanding that parties were directed to file their written submissions in regard to the two surveyor’s reports, the learned counsel for Teresia Wanjiru submitted that there was need for a court order to be issued directing David Mbeke Kanyoro to avail the original title deed and in default of such production the court to order the land registrar of Kiambu do dispense with the production of the original titles. Teresia’s learned advocate also sought that the court do order the necessary transfer documents be signed by the court if the administrators of the estate, that is, James Ngige Warobo and David Mbeke Kanyoro fail to sign.
14. The two prayers for dispensation of production of original title in carrying out the transfer and for the court to sign the transfer documents in place of the administrators are the prayers in the application, hereof, dated March 7, 2017 which to-date has remained undetermined. That application was filed by Jane Nduta Munyua who is since deceased but substituted by Teresia Wanjiru Kimani and Esther Njoki Murigi.
15. James objected to the prayers and sought in the submission that there was no application seeking such prayers before court. However, as I have stated before there is indeed a pending application dated March 7, 2017.
16. The issue that arises for consideration is whether this court can issue the orders sought through written submissions. Any doubt whether this court should consider the prayers is dispelled by what was observed by this court’s ruling dated October 5, 2021. By that ruling this court noted that despite the deceased having died in the year 2000, the estate has remained undistributed and consequently the beneficiaries of this estate have passed away necessitating applications for rectification of the confirmed grant.



17. There has undoubtedly been delay in the conclusion of the administration of this estate. Therein lies the overarching justification to grant the orders sought in the submissions and which also are the orders sought by the application dated March 7, 2017. To entertain that application will bring the conclusion of this administration closer. James will not be prejudiced by consideration of the application because he filed his replying affidavit dated May 21, 2017. His main objection in that replying affidavit was that the survey process had not been undertaken to justify an order for the land registrar to dispense with the original title being produced or for an order for the court to sign transfer documents instead of the administrators. Since by this ruling this court will determine which survey will be used, the objection by James dissipates.
18. I am persuaded that the justice of this case favors granting the prayers sought in the application dated March 7, 2017.

Disposition

19. The following are the orders of this court:
- a. The survey report that will be followed in determining the sub-division of Land LR No Kiambaa Thimbugua 2097 and 2098 shall be the one filed in this file dated December 3, 2018 by C N Kimani surveyor, Kiambaa sub-county.
 - b. Any property/structure which encroached land which is under that subdivision in (a) above and does not fall under their share of this estate shall within 60 days from today date be demolished by the owner of the structure/property and in default shall be demolished by the beneficiary upon whose share the structure/property is to be found and such demolition shall be at the cost of the owner of the property/structure.
 - c. The land registrar of Kiambu is ordered to dispense with the need of production of the original title deeds of Land LR Kiambaa/Thimbugua 2097 and 2098.
 - d. The Deputy Registrar of this Court is hereby authorized to execute instead of the administrators of this estate the transfer of Land LR No Kiambaa/Thimbugua 2097 and 2098 in accordance with the further rectified certificate of Confirmation of Grant of the estate of Munyua Mbeke (deceased) dated October 15, 2021.
 - e. Each party shall bear their own costs.

RULING READ, DATED AND DELIVERED AT KIAMBU THIS 10TH DAY OF MARCH, 2023.

MARY KASANGO

JUDGE

In the presence of :-

Coram:

Court Assistants: Mourice/Julia

For David Mbeke Kanyo and Grace Njeri Kanyoro:-

For James Ngige Warobo:- Mr. Gatitu

For Teresia Wanjiru Kimani:- Ms. Muriuki H/B Ms. Mbanya

Court

Ruling delivered virtually.



MARY KASANGO
JUDGE

