



**In re Estate of Stephen Kirimi M'amanja alias Karimi M'amanja (Deceased)
(Succession Cause 10 of 2018) [2023] KEHC 3202 (KLR) (14 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3202 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 10 OF 2018
EM MURIITHI, J
APRIL 14, 2023**

BETWEEN

DANIEL KABURU STEPHEN PETITIONER

AND

JOHN MARANGU STEPHEN RESPONDENT

AND

PAUL KINYUA STEPHEN INTERESTED PARTY

RULING

1. By Summons under certificate of urgency dated April 8, 2022 brought under sections 43, 83 (g) of the Law of Succession Act, Rule 73 of the Probate and Administration Rules, the applicant seeks that:
 1. Spent
 2. This Honorable Court be pleased to order and/or compel the Petitioner to tender, avail and/or supply the accounts relating to the administration of the estate of the deceased in terms of the rectified certificate of confirmation of grant confirmed on August 24, 2021.
 3. In default of prayer 2 being satisfied, within fourteen (14) days of the order, the Honorable Court be pleased to appoint the Respondent John Marangu Stephen as the administrator to complete the administration of the estate of the deceased.
 4. This Honorable Court be pleased to order that the sale of Nkuene/Taita/298/160 by the petitioner without involving the beneficiaries is illegal, null and void.
 5. The Honorable Court be pleased to order revocation of the sale or any other transactions made by the petitioner/administrator over title No Nkuene/Taita/398/160.



2. The application is premised on the grounds on the face of it and supporting affidavit of Paul Kinyua Stephen, the applicant herein, sworn on even date. The court, vide its ruling of August 24, 2021 directed the petitioner to complete administration of the estate and give full and accurate account thereof within 6 months of the ruling. However, the petitioner clandestinely proceeded to sell title No. Nkuene/Taita/398/160 without involving the other beneficiaries. He accuses the petitioner of contravening section 83 (c) of the *Law of Succession Act*, because he has been reluctant to distribute LR No Ngobit Supuko Block 5/132 South Imenti, Cooperative Bank Shares and Plot No. Nkuene/Taita/398/160 (allegedly sold). There is risk of intermeddling with the undistributed estate properties if the same are not distributed as a matter of urgency. He prays that the court revokes the illegal sale of Nkuene/Taita/398/160 which has been done without involving other beneficiaries.
3. The petitioner opposed the application vide his replying affidavit filed on July 25, 2022. He avers that during the confirmation of the grant, the court ordered Plot No Nkuene/Taita/398/160 to be sold and the proceeds thereof shared equally among the 5 beneficiaries because it was too small to be shared. He approached his siblings to bring their valuers and further get purchasers for the plot, but they were uncooperative. He eventually had the plot valued and later sold to Henry Muthee Mutonga, for a consideration of Ksh 5,000,000. His siblings have refused to take their share of the proceeds of the sale of the plot, and have filed Nkubu PMCC ELC No 22/2022 in a bid to frustrate the purchaser from enjoying the property he bought. Julius Kimani, Esther Ruguru and him paid the surveyors fee balance of Ksh 60,000 and Parcel No Nkuene/Kithunguri/183 was subdivided into Nkuene/Kithunguri/2971, 2972, 2973, 2974 & 2975. He could not complete the administration herein because his siblings have refused to avail copies of their P I N certificates, Id Cards and coloured passports to enable the transfers to be effected. He has been unable to trace the co-operative bank shares for distribution, and Ngobit Supuko Block 5/132 South Imenti is not available for distribution, since it had been sold to 3rd parties long before the initial grant was revoked. He avers that he has practically distributed the deceased's estate except where his siblings have refused to cooperate or put roadblocks. He urges the court to dismiss the application with costs, as it is hopeless, lacking in merits and an unnecessary hindrance to the faster distribution of the deceased's estate.
4. The petitioner swore a further affidavit on October 28, 2022 where he has annexed the ruling of October 19, 2022 by the Nkubu PMC Court dismissing the application challenging the transfer of the plot to the 3rd party.

Submissions

5. The applicant faults the petitioner for selling Nkuene/Taita/398/160 without involving all the beneficiaries in the negotiation of the price, and cites *Re Estate of Annah MENCHUNGEI KOIKA (Deceased)* (2021)eKLR. He accuses the petitioner of taking too long to conclude the administration and distribution of the estate to its rightful beneficiaries despite the time limits set by this court. He prays for the appointment of the respondent as the administrator in place of the petitioner, so that he can foresee the conclusion of the administration of the estate herein prudently.
6. The petitioner urges that he has substantially distributed the estate of the deceased except his siblings share of Nkuene/Kithunguri/183 because they have refused to avail their respective copies of their Id Cards, P I N certificates and passport photographs for the transfer process to be initiated. He urges that accounts cannot be rendered because the deceased's estate continues to be saddled with unnecessary expenses. He urges that instead of receiving their pro-rata share of the proceeds from the sale of Nkuene/Taita/398/160 less expenses, his siblings moved to Nkubu Law Courts to challenge the said sale. He urges the court to find that prayer 2 of the application is *res judicata* because it had previously been sought in the earlier application of February 26, 2022, and cites *Mary Wangari Kibika*



v John Gichuhi Kinuthia & 2 Others (2015) eKLR and *Eric John Mutemi & Another v Agnes Mumbanu Kinako* (2016) eKLR. He advises his siblings to challenge their dissatisfaction with the sale of Nkuene/Taita/398/160 in a separate and substantive suit. He urges that a succession cause concerns itself with the distribution of a deceased's estate, and therefore prayers 4 and 5 are not available.

Analysis and Determination

7. Having considered the application, the responses thereto and the submissions on record, the issue for determination is whether the application is merited.
8. On April 25, 2019, the court (A Mabeya J) ordered as follows:

“Plot No Nkuene/Taita/398/160 due to its insignificant size, the property be sold and the proceeds be distributed equally amongst the beneficiaries equally.”
9. The petitioner proceeded to source for the prospective purchasers of Nkuene/Taita/398/160 in order to dispose it off in line with the court orders. The petitioner's advocate wrote to the applicant's advocate on May 27, 2019 seeking to have a sit down with the parties to agree on the way to dispose of Nkuene/Taita/398/160. When no response was forthcoming, the petitioner vide a letter dated July 22, 2019 proceeded to source for a valuer to value the plot. Although the plot was valued at Ksh 4,543,050, it was sold for a consideration of Ksh 5,000,000. That is the amount that was due for distribution among the 6 beneficiaries of the deceased in equal shares, with each beneficiary getting Ksh 833,333. A cheque of Ksh 800,000 was then forwarded to the applicant's advocate as the applicant's share of the proceeds from the sale of the plot but the applicant insisted that he and the other beneficiaries would only accept Ksh 1,000,000. The justification given by the petitioner for the payment of Ksh 800,000 to the applicant was that he had incurred expenses to wit payment for the discharge of charge, surveyor's fees and the divisional land control board consent. The court accepts that the petitioner indeed incurred some expenses during the course of the administration of the estate. The petitioner has produced a receipt from Geoland Surveys Ltd for the sum of Ksh 60,000 paid by him. Therefore, the court is satisfied that the amount of Ksh 800,000 paid to the applicant was a justified share of the proceeds of the sale of the plot on a pro-rata basis.
10. The Record is clear that parcel No Nkuene/Kithunguri/183 has since been subdivided into Nkuene/Kithunguri/2971, 2972, 2973, 2974 & 2975. It is said that the resultant parcels are yet to be transferred to their respective owners because the beneficiaries have refused to avail the requisite documentations for the process. The petitioner's advocate indeed wrote to the applicant's advocate on April 7, 2022 requesting for the said documents in order to complete the transfer process. Now the applicant wants the court to believe that it is the petitioner who is reluctant in having the administration of the estate completed, yet he is the one impeding on the process.
11. There is no evidence to support the petitioner's allegation that parcel No Ngobit Supuko Block 5/132 South Imenti was sold to 3rd parties way before the initial grant issued herein was revoked. The title deed of August 7, 1993 for the said parcel shows that it was then registered in the name of the deceased.
12. The prayers on the substitution of the petitioner as an administrator and rendering of accounts were previously addressed by the court vide its ruling of August 24, 2021.
13. The court finds that the sale of Nkuene/Taita/398/160 was done legally with the knowledge of the other beneficiaries and the subsequent distribution of the proceeds therein was justified.



Orders

14. Accordingly, for the reasons set out above, the Court finds that the application dated April 8, 2022 is without merit and it is dismissed.
15. The beneficiaries are directed to avail the copies of their Identity Cards, Passport photographs and P I N certificates to the Petitioner in order to move the administration herein to completion. In the event of default, the petitioner will be at liberty to move the court for appropriate orders.
16. There shall be no order as to costs.

Order accordingly.

DATED AND DELIVERED ON THIS 14TH DAY OF APRIL, 2023.

EDWARD M MURIITHI

JUDGE

Appearances:

M/S Kiautha Arithi & Co Advocates for the Applicants.

M/S Maitai Rimita & Co Advocates for the Petitioner Respondents.

