



**In re Estate of Naibei Sinja (Deceased) (Succession Cause
26 of 2013) [2023] KEHC 17713 (KLR) (18 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17713 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
SUCCESSION CAUSE 26 OF 2013
AC MRIMA, J
MAY 18, 2023**

BETWEEN

MARITA N SINJA 1ST CO- ADMINISTRATOR

WILFRED M SINJA 2ND CO- ADMINISTRATOR

AND

JAMES MWETICH SINJA OBJECTOR

RULING

Introduction:

1. This ruling relates to an application by way of a Summons for Rectification of Grant dated May 11, 2020. The application was taken out by the Objector herein alongside other several persons who were variously interested in the estate of the deceased herein.
2. The application was partly conceded to and the remainder thereof was determined by this Court by way of viva voce evidence.
3. The Objector testified together with two witnesses whereas the 2nd Administrator solely testified.
4. This ruling, therefore, disposes the Summons for Rectification dated May 11, 2020 in this matter.

The Summons:

5. The application was premised on Sections 45, 47 and 74 of the *Law of Succession Act*, Cap 160 of the Laws of Kenya as well as Rule 43 and 73 of the *Probate and Administration Rules*.
6. The following orders were sought: -
 1. Spent;



2. That the Honorable Court be pleased to rectify partial certificate of confirmation of grant issued to Marita N Sinja, Rodah C Sinja, Steah C Naibei and Wilfred M Sinja in this matter on the December 18, 2019 and a further confirmation be made in the following respects: -
 - a. The Schedule of the certificate of confirmation of grant in regard to the name, description of property (Land parcel number Cherangany/Kapcherop/377) and share of heirs be rectified to the effect that the names of the beneficiaries: -
 - a. Wilfred M Sinja – 5.0 Acres
 - b. Nelson B Sinja – 2.0 Acres
 - c. John K Sinja – 2.0 Acres
 - d. Elijah K Sinja – 2.0 Acres
 - e. Morgan K Sinja – 2.0 Acres
 - f. Dennis Sinja – 2.0 Acres
 - g. Nashon K Sinja – 1.0 Acres
 - h. Francis K Sinja – 0.6 Acres be included in the list of the beneficiaries of the estate of Naibei Sinja(Deceased).
 - b. That the initial subdivision of original title number Cherangany/Kapcherop/377 and the creation of new numbers ranging from Cherangany/Kapcherop/2797 – 2807 be cancelled and the county Land Registrar in Iten draw a new map in respect of the whole share of land parcel no Cherangany/Kapcherop/377 to incorporate the changes made.
3. That costs of this application be provided for.
7. The application was supported by the grounds on the face thereof and by the Affidavit in Support sworn by the Objector/Applicant. The gravamen of the application was that a Rectified Partial Certificate of Confirmation of Grant issued on December 18, 2019 did not enlist all the beneficiaries of the estate of the deceased. It was also posited that the said Certificate of Confirmation unlawfully issued part of the estate to third parties.
8. The application came before Court on October 6, 2020. With all parties duly represented by Counsel, part of the application was allowed by the consent of the parties.
9. The consent was that 5 out of the 8 persons appearing on paragraph 2(a) of the application were agreed as beneficiaries of the estate. The shares of the said 5 persons were also agreed upon as follows: -
 - a. Nelson B Sinja – 2.0 Acres
 - b. John K Sinja – 2.0 Acres
 - c. Elijah K Sinja – 2.0 Acres
 - d. Morgan K Sinja – 2.0 Acres
 - e. Dennis Sinja – 2.0 Acres
10. On October 19, 2020, the application came before Court again and the parties, duly represented by Counsel, consented to one Nashon K Sinja to be a beneficiary of the estate of the deceased with a share of 1 acre.



11. Arising out of the twin consents by the parties, the application was, to a large extent, settled. The remainder of the application was the determination of the shares of two persons namely Wilfred M Sinja and Francis K Sinja.
12. On April 22, 2021, the application came for directions before Hon Kimaru, J (as he then was) and in the presence of Counsel. It was eventually agreed that the issues to be determined will be as follows:
 - i. The shares for Wilfred M Sinja, Francis K Sinja and Marita M Sinja.
 - ii. The fate of those who purportedly purchased part of the estate property be determined.
13. Parties were directed to file and serve statements and be at liberty to call witnesses. The hearing was subsequently held where the Objector testified as PW3 and called two purported purchasers namely Joseph Toroitich Chebet (testified as PW1) and Mark Kiptanui Keino (testified as PW2). Wilfred M Sinja testified on behalf of the Administrators as DW1.
14. At the close of the respective cases, parties filed written submissions, hence, this ruling.

Analysis:

15. With the issues for determination clearly demarcated, this Court will, in the first instance, look at the history of this matter as it unfolded in the record.
16. The deceased herein, Naibei Sinja, died on June 28, 1990. He was survived by his three wives and several children. They were as follows: -

1st House:

- i. Rodar C Sinja - 1st Wife (Widow)
- ii. James Mwetich Sinja - Son
- iii. Daniel Kiptoo Sinja - Son
- iv. Barnabas O Sinja - Son

2nd House:

- i. Marita M Sinja - 2nd Wife (Widow)
- ii. Wilfred M Sinja - Son
- iii. Andrew Sinja - Son

3rd House:

- i. Steah C Naibei - 3rd Wife (Widow)
- ii. Nelson B Sinja - Son
- iii. John Sinja - Son
- iv. Morgan Sinja - Son
- v. Elijah K Sinja - Son
- vi. Denis S Sinja - Son



17. The three wives together with the Wilfred M Sinja petitioned for the administration of the estate of the deceased by filing a Petition sometimes in February, 2013.
18. A Grant of Letters of Administration Intestate was issued on March 2, 2015. The family of the deceased then held several meetings and agreed that each of the houses to get 10 acres of the estate property. The estate property was Cherangani/Kapcherop/377 which was confirmed by way of a survey exercise to be 34.2 acres. There being three houses, the remainder of the 4.2 acres was to be shared among two other children of the deceased whose mothers were not married. They were Martin K Sinja and Francis K Sinja. Each was to get 2 acres.
19. The Grant was confirmed on February 2, 2017 and a Certificate of Confirmation of the Grant issued accordingly.
20. Sometimes in 2017, James Mwetich Sinja, one of the children of the deceased from the 1st house was enjoined by several people who mostly were purchasers of part of the land forming the estate of the deceased and challenged the issuance of the Grant and the Certificate of Confirmation. That was vide a Summons for Revocation dated December 14, 2017.
21. Before the said summons for revocation was determined, one Mark Kiptanui Keino, one of people who alleged to have bought part of the estate property from a beneficiary of the estate filed another Summons for revocation. It was dated March 20, 2018.
22. Another Summons was filed by James Mwetich Sinja and those he represented restraining any dealings on the land. It was dated August 14, 2018. Interim orders were issued by the Court on August 16, 2018.
23. The above three summonses were, however, all withdrawn by the consensus of the parties on April 1, 2019 with a view to pave way to the implementation of Certificate of Confirmation issued on February 2, 2017.
24. A Summons for security for the implementation of the Certificate of Confirmation of the Grant dated May 22, 2019 was filed by James M Sinja and was allowed by the Court on June 12, 2019.
25. There was another application that was later filed by James M Sinja. It was a Summons for Rectification of the Grant dated November 5, 2019. The application was allowed by the consent of the parties and a Rectified Partial Certificate of Confirmation of the Grant was issued on December 18, 2019.
26. James M Sinja was not yet done in the matter. He again filed another application. It was a Summons for Rectification dated May 11, 2020. The application sought the orders as captured in the foregoing paragraphs of this ruling.
27. It was that application that was partly allowed by the consent of the parties on October 6, 2020. Out of the 8 persons that were petitioned to be included as beneficiaries, 5 of them were allowed. A Further Rectified Partial Certificate of Confirmation of the Grant was issued on October 6, 2020.
28. Again, the parties entered into another consent on October 19, 2020. One Nashon K Sinja was admitted as a beneficiary of the estate.
29. There was another Summons dated December 28, 2020 which was filed by James M Sinja that sought to bar the burial of one Andrew N Sinja on the estate property. The application seems to have been abandoned.
30. The matter then came before Hon Kimaru, J (as he then was) on April 22, 2021 where the directions featured above were issued.



31. With the above background, this Court will now deal with the two issues delineated in this matter.
The shares for Wilfred M Sinja, Francis K Sinja and Marita M Sinja:
32. The members of the family of the deceased deserve a great applause for the effort in settling most of the issues amicably. This Court will, therefore, not interfere with the distribution of the estate property that was agreed and consents recorded in Court.
33. The consents recorded in Court constitute binding contracts which can only be dealt with otherwise on settled principles. (See the Court of Appeal in *Board of Trustees National Social Security Fund vs Michael Mwalo [2015] eKLR*).
34. The fact that the family agreed that each of the three houses gets 10 acres is not disputed. As such, since Marita M Sinja is the second wife of the deceased, she should inherit from the 10 acres apportioned to the second house.
35. Likewise, Wilfred M Sinja, being a son of the deceased from the second house should inherit from the 10 acres allocated to that second house alongside Andrew Sinja and his mother Marita M Sinja.
36. In respect to Francis K Sinja, it is on record that he was a son of the deceased whose mother was not married to the deceased. The family arrangement was that he be allocated 2 acres. It is also evident from the copy of the Green Card that Francis K Sinja got his title deed for the 2 acres.
37. Given the distribution design adopted by the family and in view of the several consents recorded in Court, it appears that the allocation of 2 acres to Francis K Sinja is fair and reasonable. This Court finds the proposal in line with the good order established by the family.
38. As I come to the end of this issue, the second house should, therefore, indicate how it intends to share the 10 acres allocated to it.

The Purchasers:

39. This Court has carefully considered the fate of those who purchased part of the estate land. It has also perused the evidence of PW1, PW2, PW3 and DW1 further to the various dispositions on record.
40. What has apparently come out is that none of the purchasers alleged to have bought their portions of the land from the deceased, but from one of the children of the deceased namely Andrew N Sinja, who was obviously a beneficiary to the estate.
41. This Court has also noted that there has been a lot of litigation and engagements between the purchasers and Andrew N Sinja. Some of the disputes may be still pending in Court.
42. As stated above, the Grant was issued to four persons. They are the three widows and Wilfred M Sinja who was one of the children from the second house. PW1 testified that he bought a portion of the land measuring 4 acres from Andrew N Sinja. The alleged Vendor was not one of the Administrators of the estate although he was a son to the deceased from the second house.
43. The agreement produced by PW1 as Exhibit 5 indicated that the Vendor was selling his share of the deceased's property. It also indicated that the Vendor's family members had no objection to the transaction. However, none of the family members signed the said agreement.
44. PW2 testified that he also bought 1 acre of the land from the said Andrew M Sinja. Further, Wilfred M Sinja also alleged that he bought 3 acres from the same Andrew M Sinja who was his brother.



45. From the above, it can be summed up that Andrew M Sinja sold a total of 8 acres of the land to PW1, PW2 and DW1. However, from the family arrangement, Andrew M Sinja was only entitled to a fraction of the 10 acres allocated to the second house.
46. Be that as it may, the position in this matter is that the issue of sale of part of the land by Andrew M Sinja is unsettled. It can only be resolved in two ways. The first way is for the second house to come up with the mode of sharing the 10 acres hoping that all those who bought from Andrew M Sinja would be accommodated. The second way is for the parties to pursue their rights before the appropriate Court.
47. Having said as much, this Court will make appropriate orders going forward.

Disposition:

48. Deriving from the foregoing, the following final orders do hereby issue: -
 - a. The allocation of 2 acres of the estate property to Francis K Sinja is affirmed.
 - b. The second house shall file the mode of distribution of the 10 acres of the estate land allocated thereto within 14 days of this order.
 - c. This Court shall issue further orders on receipt of the mode of distribution in (b) above and on a date to issue.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KITALE THIS 18TH DAY OF MAY, 2023.

A. C. MRIMA

JUDGE

Ruling No. 1 virtually delivered in the presence of:

Mr. Wanyonyi, Counsel for the Objector/Applicant.

Mr. Teti, Counsel for the Petitioners/Respondents.

Regina/Chemutai – Court Assistants.

