



**In re Estate of Samson Karandini Mwandime (Deceased) (Succession Cause 598 of 2014) [2023] KEHC 21484 (KLR) (1 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21484 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 598 OF 2014**

**WM MUSYOKA, J**

**AUGUST 1, 2023**

**IN THE MATTER OF THE ESTATE OF SAMSON KARANDINI MWANDIME  
(DECEASED)**

**RULING**

1. The administrator, Mark Wanje Sikutwa, was appointed herein on December 7, 2014, and a grant of letters of administration intestate was issued, curiously, on December 2, 2014. A summons for confirmation of grant was then filed on April 9, 2015, by the administrator, bearing an even date. He identifies the survivors of the deceased as Wycliffe Efumbi Karandini, and lists himself as a dependant of the deceased. He identifies 1 asset as available for distribution: North Kabras/Kiliboti/280. He proposes that the said property be shared out between himself and the sole survivor, Wycliffe Efumbi Karandini, so that he, the administrator, gets 2 acres, and the survivor, Wycliffe Efumbi Karandini gets 4½ acres.
2. Wycliffe Efumbi Karandini has filed a replying affidavit, sworn on November 16, 2016. He avers to be the only son of the deceased. He says that as he was processing documents, before he lodged a succession cause in the estate of the deceased, he established that the administrator had lodged a caution in the register for North Kabras/Kiliboti/280. He asserts that as the only son and child of the deceased, he would have been party or signatory to a sale agreement. He avers that he filed succession proceedings in Butali SRMCSC No 67 of 2013, which was resolved in his favour. He asserts that the administrator herein cannot conduct succession to the estate of the deceased herein as he was a stranger. I shall refer to Wycliffe Efumbi Karandini as the protestor.
3. The administrator swore an affidavit on November 21, 2016, in response. He confirms that the protestor was the only son of the deceased. He states that the protestor did not commence succession proceedings in the estate of the deceased, and that, in any case, he had not disclosed details of the alleged suit. He avers that what he is aware of is a suit filed at the Butali court, by the protestor, against him, being Butali SRMCCC No 67 of 2013, seeking removal of a caution on North Kabras/Kiliboti/280. He asserts that he bought the land, 2 acres. He further says that the matter was before the Land Disputes Tribunal, being Matete LDTC No 3 of 2011, which was resolved in his favour. However, he says, the



- decision of the Tribunal could not be effected, for the estate had no administrator. He asserts that he has been using the land since 2001. He states that he caused a citation to issue on the protestor, prior to this cause being commenced, but the protestor took no action. He reiterates that his interest in the property is limited to the 2 acres that he allegedly bought.
4. The protestor has attached copy of a judgment in Butali SRMCCC No 67 of 2013, where the suit by the protestor, against the administrator, for removal of the caution was dismissed, on grounds that the same had been placed there properly, to protect and assert the interests of the administrator. There is a handwritten sale agreement, dated August 4, 2001, allegedly between the deceased and the administrator. There are proceedings and verdict of the tribunal, dated September 27, 2011. There is a charge sheet, where the administrator is the complainant and the protestor the accused. Finally, is a copy of the plaint in Kakamega ELC No 221 of 2017, between the administrator and the protestor, for injunction against trespass and compensation for damaged property.
  5. The matter was disposed of by way of oral evidence.
  6. The administrator was the first to testify. He stated that he had bought 2 acres out of the estate property from the deceased in 2001. But the seller did not process a title deed for the 2 acres, because his son, the protestor herein, protested the sale. The protestor then sued him at the tribunal, which resolved that the deceased had a right to sell the 2 acres to him, as he had already allocated his sons their respective shares. The administrator then lodged the caution against the title to secure a purchaser's interest, after the protestor refused to go to the Land Control Board with the deceased, to have the process of transfer commence. He then sued the administrator at Butali, but the case was dismissed, on grounds that he was entitled to file the caution. The administrator filed the succession proceedings, after having citations issued and served on the protestor. He said that he was interested in getting his share of the land he had bought. He said that the deceased had only 1 child, the protestor. He said that the sale agreement had recorded that the protestor was present when the sale money was given, and he also signed the agreement document. He said that the protestor delayed in obtaining representation, hence the administrator decided to move the court.
  7. Charles Wanjala Ndege testified next. He said that he was not party to the sale agreement, and that he got to know about it after he became a village elder. He said that the administrator took possession after the sale, and was using the land. He said that there was a boundary. Rabison Mugonambi Wambani was the next witness. He said that he was present when the sale agreement was signed. He said that the deceased came to the meeting accompanied by members of his family. He said he was not aware whether the administrator had been given his share of the land.
  8. The protestor testified next. He said that he was the only child of the deceased. He said that the deceased had told him that the administrator had never bought the alleged 2 acres from him. He said that orders were made at Butali court barring the administrator, but government officials on the ground saved him from the law. He conceded to having been party to the tribunal proceedings. He said that the tribunal held that the land did not belong to the administrator. He said that the administrator was not in possession.
  9. Silas Efumbi Karandini followed. He was a son of the protestor and a grandson of the deceased. He asserted that the deceased did not sell land to the administrator. He testified that the deceased told him and the protestor so. He said that they were the ones in possession, and that the administrator used to use the land in the past. He said that the deceased had only leased land to the administrator.
  10. There is no dispute on the survivors of the deceased. The protestor was the only person who survived the deceased. It emerged at the hearing that he was the only son and the only child. The dispute centres around the status of the administrator, as a beneficiary of the estate. He alleges that he bought



a portion of the estate property. The protestor disagrees, by asserting that there was no sale at all. The administrator has produced a handwritten sale agreement, and proceedings at the tribunal and elsewhere. The land in question was registered. Ownership of land changes hands upon registration of the land in the name of the buyer, and not at the point of exchange of the purchase price or execution of the sale agreement. A sale can be upheld where transfer was not done before the deceased died, upon concurrence of the buyer and the survivors of the deceased. Where there is a dispute on the sale, the probate court would not uphold it, and would urge the parties to initiate separate proceedings to establish validity of the sale. The survivors of the deceased in this case have not concurred to the sale, and the probate court ought to lookout for a decree of a court upholding the sale. Do I have one such decree?

11. The administrator has proceedings from the tribunal. These proceedings were initiated while the deceased was alive. The tribunal found and held that the administrator had bought the 2 acres, and the tribunal awarded the 2 acres to him, and summoned the deceased to attend before the tribunal to sign the subdivision forms. I have 2 problems with this evidence. The first relates to jurisdiction. The tribunal was established and regulated by the now repealed *Land Disputes Tribunals Act*, cap 303A, Laws of Kenya. Under that law, the tribunal had no jurisdiction to determine questions around ownership of land. Its mandate was limited to issues around boundaries and right to use land. Sale of land revolves around ownership, and that could only be resolved in court proceedings. The tribunal, therefore, had no jurisdiction to make the sort of pronouncement made in the instant case. A verdict made without jurisdiction is as dead as a dodo. Secondly, under that law, the award of the tribunal was subject to adoption by the court, as an order of the court. That adoption or endorsement is what clothed it with the quality of being binding. I have not been given any court paper, indicating that the same was placed before a court, and was endorsed as an order of the court. In the circumstances, that outcome is not binding on me, and I will not give it any recognition. Even if it was adopted as an order of the court, its legitimacy would still be in question, for lack of jurisdiction on the part of the Tribunal to entertain the issue that was placed before it. The court cannot give legitimacy to a decision that is illegitimate on account of want of jurisdiction.
12. The second document, that the administrator relies on, is the judgment in the proceedings in Butali SRMCCC No 67 of 2011. That dispute was on the matter of removal of a caution lodged against the title by the administrator, claiming a purchaser's interest. However, determination of that question revolved around whether or not the administrator had entered into a sale agreement with the deceased over 2 acres in the estate asset, to warrant his placing a caution against that title. The court had to determine that question as a preliminary to determining the matter of removal of the caution. In the end, the court concluded that there was a sale of the 2 acres, and there was entitlement, in the circumstances, to lodge the caution.
13. For avoidance of doubt, the court ruled, on the sale, as follows:

“ ... Weighing the entire evidence on a sack of justice I find that the plaintiff failed to prove that the defendant did not buy any portion of land from his late father. I therefore find that the defendant must have bought a parcel of land measuring 2.0 acres from the father of the plaintiff.”
14. Although the issue of the validity of the sale was not the primary issue, it was a critical secondary issue, which had to be resolved prior to the court determining the primary issue. As the issue of the status of the sale was resolved in Butali SRMCCC No 67 of 2011, it is now water under the bridge. It cannot be re-litigated here, in succession proceedings, and I do not even have the jurisdiction to determine it, in view of articles 162(2) and 165(5) of the *Constitution* and sections 2 and 101 of the *Land Registration*



Act, No 3 of 2012, and sections 2 and 150 of the Land Act, No 6 of 2012, but the magistrate court does have jurisdiction, for it is empowered, under the Land Registration Act and the Land Act, to handle disputes arising around the matters covered or governed by the 2 pieces of land legislation. The issue of the validity of the sale was resolved, and I shall treat the administrator, based on that judgment, as having a legitimate claim to the 2 acres. That was a finding of fact, which had a force of law, and which the protestor ought to have challenged on appeal. It remains intact, and I cannot turn a blind eye to it.

15. How is the property to be distributed? The administrator is entitled to the 2 acres sold to him, as per the judgment in Butali SRMCCC No 67 of 2011. He shall get his 2 acres. After that the protestor shall take the remainder.
16. The final orders are:
  - a. That the grant made to Mark Wanje Sikutwa, on November 7, 2014, and issued on November 2, 2014, is hereby confirmed;
  - b. That Mark Wanje Sikutwa shall have 2.0 acres out of North Kabras/Kiliboti/280, and the balance shall devolve upon the protestor, Wycliffe Efumbi Karandini;
  - c. That a certificate of confirmation of grant shall issue, accordingly;
  - d. That the administrator has 6 months from the date herein, by dint of section 83(g)(i) of the Law of Succession Act, to transmit the estate in terms of the orders above, and to complete administration of the estate herein;
  - e. That the matter shall be mentioned, after 6 months, to confirm transmission of the estate, and completion of the administration, so that the court file herein can thereafter be closed;
  - f. That each party shall bear their own costs; and
  - g. That any party aggrieved, by the orders made herein, has leave of 30 days, to move the Court of Appeal, appropriately.
17. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 1<sup>ST</sup> DAY OF AUGUST 2023**

**WM MUSYOKA**

**JUDGE**

Appearances

Ms. Masakhwe, instructed by Gabriel Fwaya, Advocate for the administrator.

Wycliffe Efumbi Karandini, the protestor, in person.

