



REPUBLIC OF KENYA



In re Estate of Daniel Mnokou Tumkou (Deceased) (Succession Cause 271 of 2011) [2023] KEHC 22262 (KLR) (19 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22262 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
SUCCESSION CAUSE 271 OF 2011
AC MRIMA, J
SEPTEMBER 19, 2023**

IN THE MATTER OF: THE ESTATE OF DANIEL MNOKOU TUMKOU (DECEASED)

BETWEEN

PHILIP CHESOROM TUMKOU APPLICANT

AND

FRED POGHISYO TUMKOU PETITIONER

RULING

1. This ruling relates to the Summons for Review on Distribution dated April 16, 2021. It was filed by the Applicant herein.
2. The application sought the following reliefs: -
 1. That this application be certified as urgent and prayer No 3 herein be granted in the interim.
 2. That the distribution of November 22, 2012 in regard to title No West Pokot/Keringet 'A'/1 owned by the deceased herein be reviewed and varied, and that out of nine (9) acres transmitted to the Administrator and now comprised in Title No West Pokot/Keringet 'A'/2814, six acres thereof be transferred to the applicant, by the administrator and failing which the Deputy Registrar of this Hon Court be authorised to sign all the documents that would facilitate the transfer.
 3. That while pending the hearing and determination of this application, the land comprised in title No West Pokot/Keringet 'A'/2814 be preserved by making an order that the same be not sold subdivided or charged.
 4. That two developed plots Nos C-10 and C-11 situated at Makutano centre and belonging to the deceased be distributed among the beneficiaries.



5. That costs be provided for.
3. The application was supported by the grounds appearing on the body thereof together with a supporting affidavit evenly sworn by the Applicant. A Further Supporting Affidavit sworn by the Applicant on September 27, 2021 was also filed.
4. The Petitioner opposed the application. To that end, he filed a Replying Affidavit sworn on June 24, 2021.
5. The application was heard by adducing viva voce evidence. Both parties testified and none called any witness. At the close of the respective cases, parties filed written submissions. Several decisions were referred to by the parties in urging their respective positions.
6. This Court has carefully considered the application, the response, the oral evidence, the written submissions and the decisions referred to.
7. There are two principal issues for determination in this matter. The first one is whether the Applicant was aware and took part in the succession proceedings herein, and, the second one is whether some of the deceased's properties were not included in the confirmation application and as such they are yet to devolve accordingly.
8. On the first issue, and, without much ado, this Court has perused the record and noted that the Petitioner listed the Applicant as a beneficiary in Form 38 (Consent to the making of a Grant of Administration) when petitioning for the Grant of Letters of Administration Intestate. The Applicant, however, did not sign the said form. The Petitioner was represented by Counsel.
9. A Grant of Letters of Administration Intestate was issued to the Petitioner on March 26, 2012. A Summons for confirmation of the Grant was taken out by the Petitioner. It was dated October 15, 2012. The Applicant was indicated as a son of the deceased. An Agreed Mode of Distribution of the estate properties evenly dated was also filed. According to the said document, the Applicant was not allocated any share of the deceased's net estate. There was also a Consent Form 37 which was filed in support of the confirmation. The document did not contain the name of the Applicant and as such, the Applicant did not sign it.
10. The Summons for confirmation was heard before Hon JK Karanja, J on November 22, 2012. According to the record, the Petitioner's Counsel appeared alone and the summons was allowed as prayed. Consequently, a Certificate of Confirmation of the Grant dated November 22, 2012 was issued.
11. Responding to the contention that the Applicant was not involved in the succession proceedings, the Petitioner deposed that before petitioning for the grant, he approached and requested the Applicant to join hands, but he declined. The Applicant denies such assertion and held that he only learnt of the instant proceedings sometimes in early 2021 and immediately filed the application under consideration.
12. Therefore, by placing the Applicant's position and that of the Petitioner side by side, it comes to the fore that the assertion that the Applicant was not aware of the proceedings carries the day. It is apparent that the Applicant did not sign the consent forms both at the petitioning and the confirmation stages. If, for instance, the Petitioner was right in his assertion, still he was under a duty to effect service of, at least, the Summons for confirmation more so since the Applicant stood not to get any share of the net estate. The record has no affidavits of service to that end.



13. This Court is, on a balance of probabilities, satisfied that the Applicant's right to a fair trial under Article 50(1) of the Constitution and his right to property under Article 40 of the Constitution were outrageously infringed in the manner the proceedings were carried out.
14. On the second issue that the deceased's properties known as Plot Nos C-10 and C-11 within Makutano Centre were left out, the Petitioner argued that the deceased had, and prior to his death, bequeathed them in accordance with a Statutory Declaration. The Applicant did not buy such.
15. Given that there is a dispute on the alleged Statutory Declaration, then the validity and effect thereof ought to be looked into.
16. Having duly considered the two main issues in this matter, justice and fairness calls upon, at least, that the aspect of distribution of the estate properties ought to be revisited more so since the Applicant has not challenged the validity of the Grant issued to the Petitioner.
17. Further, it has come to the attention of this Court that the estate properties are all within the West Pokot county and since there is now a High Court station at Kapenguria, it is in the interest of good order and proper case management that this matter be transferred thereto.
18. Deriving from the foregoing, the following orders do hereby issue in respect to the Summons for Review on Distribution dated April 16, 2021: -
 - a. The order made on November 22, 2012 allowing the Summons for Confirmation of the Grant dated October 15, 2012 be and is hereby set-aside.
 - b. The Summons for Confirmation of the Grant dated October 15, 2012 shall be served upon the Applicant within 14 days of this Order. The Applicant shall, henceforth, participate in these proceedings as a Protestor.
 - c. This matter is hereby transferred to the High Court of Kenya at Kapenguria.
 - d. This matter is also referred to mediation. The Hon. Deputy Registrar at the High Court of Kenya at Kapenguria shall, on receipt of the Court file, initiate the mediation process.
 - e. Given that the parties are close family members, there shall be no order as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KITALE THIS 19TH DAY OF SEPTEMBER, 2023.

A. C. MRIMA

JUDGE

Ruling No. 1 delivered virtually in the presence of:

Mr. Kiarie, Learned Counsel for the Applicant.

Miss. Ifedha, Learned Counsel for the Petitioner.

Regina/Chemutai – Court Assistants.

