



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Mutanda Were (Deceased) (Succession Cause
398 of 2012) [2023] KEHC 23483 (KLR) (13 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23483 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 398 OF 2012
WM MUSYOKA, J
OCTOBER 13, 2023**

RULING

1. The parties herein are disputing over the interpretation that ought to be given to a ruling that W. Korir J delivered herein on January 31, 2017. Mr. Wanyama, the Advocate for the applicant, argues that Owino Musumba, was awarded 1/3 of Marachi/Bumala/219, absolutely, by the court. That is the gist of the application, dated March 10, 2023, filed at the behest of the said Owino Musumba.
2. Mr. Fwaya, the Advocate for Catherine Nyaoro Aloo and Lucy Anyango Aloo, who are described as objectors, disagrees. He argues that the court devolved the 1/3 to the applicant, not absolutely, but to administer. The objectors did not file a formal reply to the application, but Mr. Fwaya made oral arguments on September 20, 2023.
3. I have perused the said ruling, and I find the pertinent and relevant portions to be in paragraphs 11, 12 and 13, which I recite here below verbatim:
 - “ 11. A perusal of this file clearly shows that LR No. Marach/Bumala/219 was registered in the names of Owuor Aloo. Henry Onyango and Mutanda Were. Each was entitled to a third share of the parcel of land measuring 10.2 hectares. The Respondent claims that Owuor Aloo and Henry Onyango were intruders but he never provided any prove in support of this claim. The court will therefore go by the registration documents and conclude that each of the three proprietors were entitled to an equal share of the land.
 12. The only question that remains is whether to issue a fresh grant in the names of the Petitioner and the Objectors. My answer is in the negative. Owuor Aloo and Henry Onyango have their separate estates. In the interest of the beneficiaries and whoever else wishes to lay claim to those estates, there is need to have the estates go through the full process provided by the *Law of Succession Act*, cap 260.



13. in the circumstances of this case, I order that the Petitioner and the Objectors will jointly appoint and meet the expenses of a surveyor who shall carve out one third of the restored LR No. Marach/Bumala/219 which shall be registered in the name of the Petitioner, Owino Musumba as the administrator of the estate of Mutanda Were. In doing so, the surveyor shall take into account the positions on which the families of the three deceased persons and those claiming under them have settled on the land. the remaining portion of the land shall remain in the names of Awour Aloo and Henry Onyango and the same shall be subjected to transmission proceedings by their families in the manner provided by the law.”
4. I agree with Mr. Fwaya. The plain meaning of the order by W. Korir J is that the 1/3 devolved to Owino Musumba was not meant to go to him absolutely, but in his capacity as administrator of the estate of Mutanda Were, hence the court says, “... a surveyor who shall carve out one third of the restored LR No. Marach/Bumala/219 which shall be registered in the name of the Petitioner, Owino Musumba as the administrator of the estate of Mutanda Were.”
5. Consequently, there would be no need to rectify the certificate of confirmation of grant, to reflect Owino Musumba as the absolute beneficiary of that 1/3 share. Instead, he shall hold the same as administrator of the estate herein, for administration of that share, pending its distribution amongst all the children of the late Mutanda Were, and any other legitimate claimants in that estate. In any case, the distribution in the certificate of confirmation of grant, issued on May 12, 1993, was rendered otiose, by the orders made in the ruling of January 31, 2017. The applicant herein should apply for confirmation of his grant afresh, to facilitate distribution of that 1/3 share to those entitled in law.
6. The application, dated March 10, 2023, is accordingly dismissed. There shall be no order on costs. Any party aggrieved, by these orders, has leave of 30 days, to move the Court of Appeal, appropriately.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 13TH DAY OF OCTOBER 2023

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Wanyama, instructed by Wanyama & Company, Advocates for the applicant.

Mr. Gabriel Fwaya, Advocate for the objectors.

