



**In re Estate of John Mwaka Koka (Deceased) (Succession Cause 41 of 1999) [2023] KEHC 23088 (KLR) (4 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23088 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
SUCCESSION CAUSE 41 OF 1999**

**FR OLEL, J**

**OCTOBER 4, 2023**

**IN THE MATTER OF THE ESTATE OF JOHN MWAKA KOKA (DECEASED)**

**BETWEEN**

**COSMAS MUNYAO MWAKA ..... PETITIONER**

**AND**

**MONICAH KOKA ..... CO- ADMINISTRATOR**

**RULING**

**A. Introduction**

1. The application before this court is the Chamber summons application dated 30<sup>th</sup> August 2021. The said application is brought under provisions of section 47 of the law of succession Act and rule 73 of the probate and administration rules and the applicant seeks for orders that ;
  - a. That this honorable court’s Deputy registrar do sign and/or execute all the necessary documentation to facilitate transmission and/or transfer to Monica John Koka the properties distributed/given to her under the rectified confirmed grant dated 21.09.2020 and issued on 06.10.2020 .
  - b. That the honorable court’s Deputy Registrar do sign and/or execute applications from the land control board’s, mutation forms and any other documents that maybe required to facilitate sub division and transfer/transmission to the applicant of any property that may require sub division under the (rectified) confirmed grant dated 21.09.2020.
2. The application is supported by the grounds on the face of the said application and the supporting affidavit of Monicah John Koka dated 16<sup>th</sup> August 2022. The applicant did state that, the (rectified) certificate of confirmation of grant was issued by this honourable court on 06.10.2020 jointly to her and Cosmas Munyao Mwaka- the Respondent herein. The respondent had deliberately refused to sign and executed transfer and transmission documents to enable her get her share of the estate given to



her under the said confirmed grant and thus it was obvious that the respondent is out to frustrate and inconvenience her and by extension is stalling the completion the administration process, yet it was important to close this process.

3. The Respondent in his replying affidavit denies frustrating the applicant and/or failing to execute the stated documents/instruments to enable the said transfers be effected. The said documents had never been forwarded to him and thus he was a stranger to the assertion's be the applicant. The said application was pre mature and should be dismissed.

## **B. Applicants Submissions**

4. The Appellants avers that the parties herein are co administrators of the estate of the deceased and it is not in dispute that this court did issue the certificate of confirmation of Grant dated 06.10. 2020. The only pending issue with respect to the said estate was for the distribution to be affected. This had been frustrated by the Respondents reluctance to sign transmission documents and instruments of transfer. The provisions of Section 83 (g) of the Law of Succession Act did place an obligation on the Respondent to complete administration of the Estate with respect to all matters other than continuing trusts.
5. The final distribution of the estate could not occur unless the necessary forms were executed to facilitate the smooth completion of the distribution processes. This court was therefore justified to grant this application as the orders sought for were merited. Reliance was placed on In the Estate of Makokha Idris Khasabuli (deceased), (2019) eKLR, In the Estate of Wilfred Munene Ngumi (Deceased), (2020) eKLR and Estate of the late Kubuta Kamamra Nguuro alias Pharis Njegegu ( Deceased) 2021 eKLR.

## **C. Respondents Submissions**

6. The Respondent averred that there is no proof that he had refused and/or failed to sign and execute the transmission documents and instruments of transfer. The allegations of the applicant were baseless and she had failed to discharge her obligation to prove the allegations made under provisions of section 107 of the Evidence Act. On the other hand the respondent did content that the applicant had illegally sold off a majority of the portions of the Estate before the Grant was confirmed, which was contrary to provisions of section's 45, 55 & 79 of the law of succession Act. Reliance was placed on Estate of Paul Rono Pymto & Ano v Giles Tarpin Lyonnet(2014) eKLR & Estate of Jamin Inyanda Kadambi (Deceased), (2021) eKLR.
7. The Respondent further submitted that he had declined to sign the transfer/ execute the transfer for the reason that the applicant had sold off the estate prior to grant being confirmed and due to the fact that the applicant had encroached on his share of the Estate.

## **D. Analysis**

8. I have carefully considered the Application, Supporting Affidavit, the Respondent's Replying Affidavit, written submissions filed and discern that the only issue which arise for determination is whether the court in its discretion should allow the deputy Registrar to sign off the transfer by transmission forms with respect to the properties distributed to the applicant under the (rectified) confirmed grant dated 6<sup>th</sup> October 2020 and further to allow the deputy registrar to sign/execute the land consent board forms, mutation forms and other documents that may be required to facilitate sub divisions and transfer to the applicants properties vested in her under the said grant.
9. The application as filed is fait accompli and in normal circumstances should be granted suo moto as both parties are in agreement that the said (rectified) confirmed grant dated 6<sup>th</sup> October 2021 was issued



and both parties herein are entitled to a share of the estate. The respondents only grouse is that the applicant has sold of portions of the estate, some of which he alleges encroaches on his portion and therefore has declined to sign off the transmission and transfer instruments.

10. The Respondents averment to this end are issues not brought forth in his replying affidavit dated 17<sup>th</sup> February 2022. It is trite law that no new allegations can be made on submissions. It must be based on pleadings and proved in court. See *CMC Aviation Limited v Cruisair Ltd* (No 10(1978) KLR 103, (1976-80) 1 KLR 835, *Autar Singh Bahra & Ano v Raju Govindji* HCCC No 548 of 1998 & *Trust Bank Ltd v Paramount Universal Bank Ltd & 2 others*, Nairobi Millimani HCC No 1243 of 2001
11. Section 83(f),(g), and (i) of the *law of Succession Act* , Cap 160 laws of Kenya does provide that the administrators should;
  - (f) subject to section 55, to distribute or retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or intestacy, as the case maybe;
  - (g) within six months from the date of confirmation of grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts and to produce to court a full and accurate account of the completed administration;
  - (i) to complete the administration of the Estate in respect of all matters other than continuing trust and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration;
12. The said provisions confer a duty upon the administrators to complete the process of administrators the estate except where there is a continuing trust and failure to do so must be remedied. The consequences of an administrator failure to sign completion documents have been well elaborated in various citations. In Kerugoya Succession cause No 36 of 2013; *Re Estate of Wilfred Munene Ngumi (deceased)* the court stated that ;

“section 83(g) of the Act mandates administrators of an estate to within six months of confirmation of grant or longer period as the court may allow, complete the administration of the estate, and to produce to the court a full and accurate account of the complete administration.

This undertaking cannot be done unless the necessary documents are executed by the parties.....”
13. Further in *Rose Wanjiku Kuria v Nganga Mugwe* (2003) eKLR, the court did hold that

“However, this being a succession court has ample powers donated to it by section 47 of the *law of succession Act* and rule 73 of the probate and administration rules to resort to, in order to meet the ends of justice The task of administering the estate is still on the shoulders of the respondents (administrator). As I have already noted, despite the grant having been confirmed in the year 2007 and even after the subsequent amendment by Muchemi J(which included the wan’guru plot in the certificate ), the respondent has nevertheless failed to administer the estate. I believe that court orders ought not to be issued in vain but must be complied with. Further the office of administrator of the estate of a deceased person is an



office of trust and goodwill. Where such is seen to be lacking, then the court can invoke its powers to ensure that justice is done to the beneficiaries more so where the administrator puts the beneficiaries to unenviable position.”

14. I am persuaded by the above decisions. Court orders are not made in vain. The *law of succession Act* envisages the matter be concluded within six months from the date of the confirmation of grant. It places a duty on the personal representative to complete the administration of the Estate as provided for under Section 83(j) of the *law of Succession Act* Cap 160.
15. The respondent has a solemn duty to complete the administration of the estate by executing the documents which are necessary to conclude the said administration process. Under provisions of sec 47 of the *Succession Act* and Rule 73 of the *probate and administration rules* this court has the powers to entertain this application, determine any dispute under this Act and to pronounce such decree and or make such orders therein as maybe expedient.

### **E. Disposition**

16. Taking all relevant factors into consideration I do find that;
  - a. The chamber summons application dated 30<sup>th</sup> terms of prayers (1) and (2) thereof.
  - b. Each party shall bear their own costs for this application.
  - c. It is so ordered.

**RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 4<sup>TH</sup> DAY OF OCTOBER, 2023.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

**DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 4<sup>TH</sup> DAY OF OCTOBER, 2023.**

In the presence of;

.....for Appellant

.....for Respondent

.....Court Assistant

