



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

SUCCESSION CAUSE NO. 79 OF 1958

IN THE MATTER OF THE ESTATE OF HARRY CLAPHAM STEPHENS (DECEASED)

ELIZABETH STEPHENS KITAO.....APPLICANTS

VERUS

JAMES KITAO.....RESPONDENT

RULING

1. The deceased herein died intestate on 14th January, 1958. A grant of letters of administration was issued to Elizabeth Stephens Kitao and James Kitao on 28th April, 1990 and confirmed on 30th April, 1992.

2. Unfortunately, the estate has not been fully administered to date. Due to the age of the file, the original file could not be traced. Consequently, a skeleton file was constructed although some pleadings or documents could not be availed inter alia schedule of distribution of the estate upon confirmation.

3. Consequently, Elizabeth Stephens Kitao one of the administrators moved this court vide an application dated 28th June, 2021 seeking orders that;

a. That the Deputy Registrar of the court be authorized to sign the relevant applications and all necessary transfer (transmission) form in place of the administrator one James Kitao who has refused to sign to effect transfer to person entitled in intesting on subdivision Number 19731 (Original No. 113/2) of Section Mainland North containing nought Decimal one nought six nought (0.1006) of a hectare situated in the county of Mombasa as shown in the deed plan Number 362320

b. In the alternative the Respondent be ordered to sign all necessary transfer (transmission) forms to effect transfer to persons entitled in intesting on subdivision of Number 19731 (Original No. 13/2) of section 1 Mainland North containing nought decimal one nought six nought (0.1060) of a hectare situated in the count of Mombasa a shown in the deed plan number 362320.

c. That pending hearing and determination of his application, an order be issued restraining the respondent from trespassing, intermeddling or dealing in any way with the property namely subdivision number 19731 (Original No. 113/2) of section 1 Mainland North containing nought decimal one nought six nought (0.1060) of a hectare situated in the county of Mombasa as shown in the deed plan number 362320.

d. Any other relief that will meet the end of justice.

e. Cost of this application be paid by the respondent

4. The application is based on grounds on the face of it and averments contained in the affidavit in support sworn by Elizabeth Stephens co-administrator on 28th June, 2021. It is the applicant's contention that the administrators have largely distributed much of the estate save for sub-division of No.19731 (original No 113/2 of Section 1 /Mainland) measuring 0.1060 of an hectare whose transfer documents the respondent has refused to surrender to facilitate transfer to the rightful beneficiaries.

5. Despite service of the application herein, the respondent did not bother to file any response. However, failure to file a response does not mean that the application succeeds. See Gideon **Sitelu Konchela Vs Julius Lekakeny Ole Sunkuli and 2 others (2018) e KLR.**

6. It is a bit that a succession case filed in 1958 can still find itself in the corridors of justice. I have no words to express my disappointment save to add that the administrator must complete distribution of the estate as soon as possible in default any uncooperative administrator shall be stripped off the trusteeship powers of administration.

7. Having considered the application herein, affidavit in support and the attached documents and further considering the fact that the application is not opposed, I am inclined to find that the same is meritorious and therefore do allow prayer two of the application as prayed. We do not need to bother the Deputy Registrar to sign those documents as it is the duty of the administrators to execute it and where reluctant, fresh administrator/s will be appointed to complete the process.

8. Accordingly, the application is allowed in terms of prayer two. The applicant to execute necessary documents within 30 days. Mention on 11th March, 2022 to confirm compliance and further directions.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 15TH DAY OF FEBRUARY 2022

J. N. ONYIEGO

JUDGE