



In re Estate of the Late Daniel Miwani ole Dapash (Deceased) (Probate & Administration 395 of 2013) [2024] KEHC 14252 (KLR) (15 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14252 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 395 OF 2013
RN NYAKUNDI, J
NOVEMBER 15, 2024
IN THE MATTER OF THE ESTATE OF THE LATE
DANIEL MIWANI OLE DAPASH (DECEASED)**

BETWEEN

TREAH KAOMBI AMIANI 1ST PETITIONER

BENARD CHASE AMIANI 2ND PETITIONER

AND

MOSES LEBOO DAPASH 1ST OBJECTOR

JOHN WINE KITUI 2ND OBJECTOR

RULING

1. The late Daniel Miwani Ole Dapash passed on 4th May, 2008, which saw the Petitioners herein institute the instant proceedings vide a petition dated 16th December, 2013. In the affidavit supporting the Petition, the Petitioners deposed that the deceased died intestate and left the following surviving him:
 - a. Treah Kaombi Amiani – Widow
 - b. Winny Ngunono – (daughter)
 - c. Linus Lerionka (son)
 - d. Cynthia Takhula (daughter)
 - e. Moses Lebo (son)
 - f. Joseph Letea (son)
2. They deposed that they are related to the deceased as his widow and brother in-law respectively. That the following is a full inventory of all the assets and liabilities by the deceased as the date of his death :



- a. Seregeya/Sergoit Scheme Plot No. 300 (1 Acre)
 - b. Mautuma Scheme Plot No. 100 (2 Acres)
 - c. Ten Head Of Cattle
 - d. Seven Goats
3. On the 9th April, 2014 the Petitioner were granted letters of administration intestate. On 29th October, 2014, the Objectors filed summons for revocation of the said Grant and in various court sessions as can be gleaned from the record, the parties had made indication of arriving at a consensus. However, the Objectors never vigilantly prosecuted the objection which resulted to the court dismissing the same on 3rd July, 2023. Vide summons dated 10th December, 2014 and filed in court on the 15th December, 2014, the Petitioners moved this honourable court seeking to have the Grant of Letters of Administration issued to them confirmed by this court.
 4. The matter proceeded in court and on the 3rd July, 2023, the court fixed this case for hearing of the summons for confirmation which hearing was fixed for the 1st August, 2023. On the said date, the 1st Petitioner appeared in court for the hearing of the summons for confirmation of Grants and gave out the proposed mode of distribution of the estate herein.
 5. The Petitioners in support of the said mode of distribution filed submissions dated 9th September, 2024. Learned Counsel Ms. Kigen submitted that when the 1st petitioner appeared before this court, she informed the court that the deceased's estate comprised two parcels of land to wit Seregeya/Sergoit Scheme Plot No. 300 measuring approximately 1 Acre and Mautuma Scheme Plot No. 528 measuring approximately 2 Acres.
 6. Learned Counsel further submitted that the Petitioner informed this court that the beneficiaries of the estate herein are Treah Khaombi Amiani (the widow), Winny Ngunono, Cynthia Takhula, Linus Lerionka, Moses Leboo Dapash and Joseph Letea (children of the deceased). That it was the testimony of the Petitioners in court that the estate herein be distributed as follows:
 - a. Parcel of land known as Seregeya/sergoit Scheme Plot No. 300 measuring approximately 1 Acre to go to and be registered in the joint names of Treah Khaombi Amiani, Winny Ngunono and Cynthia Takhula.
 - b. Parcel of land known as Mautuma Scheme Plot No. 528 measuring approximately 2 Acres to go to and be registered in the joint names of Linus Lerionka, Moses Leboo Dapash and Joseph Letea.
 7. Learned Counsel urged the court to proceed and confirm the grant of letters of administration in terms of the proposed model of distribution as was given by the 1st Petitioner.

Analysis and determination

8. The matter for determination before this court concerns the confirmation of grant and proposed distribution of the estate of Daniel Miwani Ole Dapash, who died intestate on 4th May 2008.
9. In determining this matter, this court is guided by the principles set out in Section 71 of the *Law of Succession Act*, which confers upon the court the discretion to confirm grants. This discretion, however, must be exercised judiciously and in strict compliance with the proviso to Section 71(2) and Rule 40(4) of the *Probate and Administration Rules*, which place an obligation on both the administrator and the court to ensure proper ascertainment of all beneficiaries and their respective shares.



10. The evidence before this court establishes that the deceased was survived by his widow, Treah Kaombi Amiani, and five children: Winny Ngunono, Linus Lerionka, Cynthia Takhula, Moses Lebo, and Joseph Letea. The estate comprises two parcels of land; Seregeya/Sergoit Scheme Plot No. 300 measuring approximately 1 acre and Mautuma Scheme Plot No. 100 measuring approximately 2 acres, along with ten head of cattle and seven goats.
11. The legal framework governing distribution in cases where a deceased is survived by both a spouse and children is explicitly set out in Section 35, 36 and 38 of the *Law of Succession Act*. These provisions create a two-tier entitlement system: first, it confers upon the surviving spouse absolute ownership of the deceased's personal and household effects, and secondly, grants them a life interest in the whole residue of the net intestate estate. This latter interest, by operation of Section 35(5) as read with 38 devolves upon the surviving children in equal shares only upon the death or remarriage of the surviving spouse.
12. The proposed mode of distribution presented before this court seeks to immediately partition the estate between the beneficiaries, with Seregeya/Sergoit Scheme Plot No. 300 being registered jointly in the names of Treah Khaombi Amiani, Winny Ngunono, and Cynthia Takhula, while Mautuma Scheme Plot No. 528 would be registered jointly in the names of Linus Lerionka, Moses Lebo Dapash, and Joseph Letea.
13. Given the background of the proposed model of distribution, the net estate of the deceased this court is of the view that if it was to apply in the strict sense the letter of the applicable provisions, then the benefit which might accrue will reduce the shares uneconomic land use. As reiterated above, it means that in this distribution, the surviving spouse has the right to use and benefit from the estate of the deceased for the course of her lifetime but ownership does not pass to her. Her life interest in the property shall be held in trust for the children but upon death her share will pass to the children as beneficiaries. The model of distribution so proposed is designed to protect the interest of all rightful beneficiaries and ensure fair distribution of the property survived of the deceased.
14. In light of the foregoing analysis, this court makes the following orders:
 - a. The grant of letters of administration intestate issued to the Petitioners is hereby confirmed.
 - b. The distribution of the estate shall be as follows:
 - i. Parcel of land known as Seregeya/Sergoit Scheme Plot No. 300 measuring approximately 1 Acre to go to and be registered in the joint names of Treah Khaombi Amiani, Winny Ngunono and Cynthia Takhula.
 - ii. Parcel of land known as Mautuma Scheme Plot No. 528 measuring approximately 2 Acres to go to and be registered in the joint names of Linus Lerionka, Moses Lebo Dapash and Joseph Letea
 - iii. I make no orders as to costs.

DATED AND SIGNED AT ELDORET THIS 15TH DAY OF NOVEMBER, 2024

R. NYAKUNDI

JUDGE

