



In re Estate of the Late Malakwen Sisiwa (Deceased) (Succession Cause 167 of 1998) [2024] KEHC 14267 (KLR) (15 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14267 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 167 OF 1998
RN NYAKUNDI, J
NOVEMBER 15, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE MALAKWEN SISIWA (DECEASED)
IN THE MATTER OF THE LAND PARCELS LR.
776/4/1, LR 776/4/2, LR 773/1 AND LR 775/1**

**IN THE MATTER OF THE AMENDED CERTIFICATE OF CONFIRMATION OF GRANT
THROUGH**

BETWEEN

RURAL HOUSING ESTATES INTERESTED PARTY

AND

SOPHIA CHEROTICH SISIWA 1ST RESPONDENT

HASSAN KIPKORIR SISIWA 2ND RESPONDENT

SALIM KIPTOO SISIWA 3RD RESPONDENT

MUSA KIPKEMBOI KITUR 4TH RESPONDENT

RULING

1. Before me for determination is summons dated 26th July, 2024 expressed to be brought under the provisions of Article 40 and 159(2)(d) of *the Constitution*, section 47, 74 and 76 of the *Law of Succession Act*, Rule 43, 44 and 73 of the Probate and Administration Rules. The applicant seeks orders as follows:
 - a. Spent
 - b. That leave be granted to Rural Housing estate to be joined as an interested party to this suit.
 - c. That if prayer b hereinabove is granted, the Honorable court be pleased to allow the interested party/applicant move the court for the grant of the following orders:



- i. That the honourable court be pleased to stay the execution of the amended certificate of confirmation of grant issued on the 28/4/2023 to the Respondent pending the interparties hearing of this application and further pending the hearing and determination of this application.
 - ii. That the Honourable court be pleased to set aside, review and/or vary its ruling 28/4/2023 through which it included land parcels numbers L.R. 776/4/1, LR 776/4/2, LR 773/1 and LR 775/1 as comprising the deceased estate.
 - iii. That the Honourable court be pleased to make a determination that land parcels numbers LR. 776/4/1, LR 776/4/2, LR 773/1 and LR 775/1 do not comprise the deceased estate.
 - iv. That the Honourable court be pleased to cancel, annul and/or revoke the amended certificate of confirmed grant issued to the Respondents on the 28/4/2023.
 - v. That the Honourable court be pleased to cancel any subdivision and/or registration of any beneficiary of the deceased estate as the registered proprietors of land parcel numbers LR. 776/4/1, LR 776/4/2, LR 773/1 and LR 775/1.
 - vi. That the Honourable court be pleased to make any other orders as it may deem fit in the circumstances.
 - vii. That the costs of this application be provided for.
2. The application is grounded on a good number of grounds and an affidavit sworn by Shrikesh Gheewala. The grounds necessitating the instant application are:
 - a. That the interested party/applicant is the absolute proprietor of land parcel number LR. 776/4/1, LR 776/4/2, LR 773/1 and LR 775/1 having purchased the same from the late Malakwen Sisiwa.
 - b. That the interested party has at all times been in occupation of the said land parcels from the year 1980 to date and have been enjoying quiet occupation thereof.
 - c. That after purchase, there was conversation of the said parcels of land as below:
 - i. LR NO. 775/1 Block No. 15/233
 - ii. LR NO. 776/4/1 Block No. 15/234
 - iii. LR NO. 773/1 Block No. 15/235
 - iv. LR NO. 776/4/2 Block No. 15/236
 - d. That the listed parcels have been the property of RURAL HOUSING ESTATE who caused sub-division and new leases were issued and the same charged with the National Bank of Kenya formally national corporation bank.
 - e. That the courts were hoodwinked by the estate to believe that the said properties belong to the estate which is not true as the late Sisiwa even after purchase, re-purchased same parcels after sub-division and sold to Raiply who were not even made aware of the intentions of the estate of Sisiwa to revive the old number which were changed and claim to be part of the estate.
 - f. That there have been several court decisions against the estate of Sisiwa about the said parcels confirming all belong to RURAL HOUSING ESTATE and even the estate was purported to



sell to third parties for instance Mohammed Ifthekhar Ghani whom there has been a court case and which is still pending in the Court of appeal between the said Mr. Ghani and RHE

- g. That it is beyond peradventure to imagine that the land still belongs to the Estate as even in their own papers to court in the above Ghani case, the Estate through Musa Kipkemboi Kitur started clearly that there had been a sale to RHE and there had been a change in the type of registration.
 - h. That the interested party/applicant thus made this application for rectification of the amended certificate of confirmation of Grant issued on 28th April, 2023 to the effect that land parcel numbers LR. 776/4/1, LR 776/4/2, LR 773/1 and LR 775/1 do not belong to the Estate of Sisiwa and the same be deleted from the said grant.
 - i. That the same was made in error as the court was not given sufficient evidence to the effect of the effected parties who not only are Rural Housing Estate but also Raiply, the persons who have acquired from Ukulima Sacco among others.
 - j. That the applicant learnt of this when appearing in a matter involving the estate of Sisiwa and itself at the National Lands Commission brought by the estate claiming for compensation for historical injustices over parcel LR 776/4/2 for a claim that the same had been compulsory acquired by the government in 1978 but the family had not been compensated.
 - k. The applicant has thus moved expeditiously to this court seeking for the revocation of the amended certificate of confirmation of grant issued to the respondents and further stay of execution of the same pending the hearing of this application.
 - l. That if the respondents are allowed to proceed with the execution of the amended certificate of confirmed grant, the beneficiaries of the deceased estate who have been apportioned land parcels LR. 776/4/1, LR 776/4/2, LR773/1 and LR 775/1 will move to the said land parcels, commence the process of subdivision of the same and are likely to evict the interested party/applicant from the land parcels to the detriment of the applicant and in spite of the applicant being the absolute proprietor of the land.
 - m. That the interested party stands to suffer substantial loss if the respondents and/or the other beneficiaries of the deceased estate are allowed to proceed with the distribution of the deceased estate in the manner specified in the amended certificate of confirmation of grant as it shall be evicted from his land parcels which shall equally be disposed to the beneficiary of the deceased estate without such land parcels forming part of the estate.
3. Let me point out that from the amended certificate of confirmation dated 28th April, 2023, the land parcels LR. 776/4/1, LR 776/4/2, LR773/1 and LR 775/1 were allocated to Hassan Kipkorir Sisiwa, Salim Kiptoo Sisiwa, Musa Kipkemboi Kituri and Sophia Cherotich Sisiwa who were to hold the said parcels in trust for all the bonafide purchasers.
 4. As of writing this decision, I had not received any response from the responding parties. However, I will proceed to evaluate the merits of the application and issue my ruling regardless.

Analysis and determination

5. The tapestry of succession law is woven with threads of both statutory provisions and equitable principles. As I pen this ruling, I must point out that succession proceedings are not meant to be platforms for perpetual litigation but rather vehicles for just and expeditious distribution of a deceased person's estate.



6. The intersection of succession law and property rights often presents complex legal scenarios that require careful judicial consideration. This case exemplifies such complexity, where the court must balance the sanctity of succession proceedings against legitimate proprietary claims by third parties, in this case the interested party. The fundamental question before this court is whether justice would be served by maintaining the status quo or by allowing intervention by a party claiming pre-existing proprietary interests in the subject matter of succession.
7. The applicant in this case is essentially seeking stay of execution of implementation of the amended certificate of grant dated 28th April, 2023. Stay of execution is a discretionary power but, which must not be exercised on whims, but judiciously, on defined principles and the facts of the case. The objective of stay of execution is to prevent substantial loss from befalling the applicant; ordinarily, it is to prevent the appeal from being rendered nugatory. Such is lawful and reasonable reason to limit the respondent's right to immediate realization of the fruits of judgment. The court in the case of *James Wangalwa & Another vs. Agnes Naliaka Cheseto* [2012] eKLR stated as follows:

“The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”
8. The peculiarity of this case lies not in the exclusion of third-party interests, but rather in the manner of their inclusion. While the amended certificate of confirmation of grant dated 28th April, 2023 attempts to protect bonafide purchasers by appointing certain beneficiaries to hold the disputed properties in trust, this approach has not been appreciated by the interested party who appear to seek separation from the said amended grant.
9. The amended certificate of confirmation of grant dated 28th April, 2023, with admirable foresight, allocated the disputed parcels - LR. 776/4/1, LR. 776/4/2, LR 773/1 and LR 775/1 - to Hassan Kipkorir Sisiwa, Salim Kiptoo Sisiwa, Musa Kipkemboi Kituri and Sophia Cherotich Sisiwa, with a specific trust obligation for all bonafide purchasers. This arrangement wasn't mere happenstance; it was a deliberate mechanism to protect third-party interests. I hold the view that where a confirmation of grant makes provision for third party interests through a trust arrangement, such provision must be given its full effect unless shown to be manifestly inadequate or fraudulent.
10. The trust arrangement in the amended grant serves multiple purposes: it acknowledges the existence of bonafide purchasers, it creates a legal framework for protecting their interests, it maintains the integrity of the succession process while safeguarding third-party rights and it provides a mechanism for orderly resolution of competing claims.
11. Having carefully considered the application before me, and being guided by the principle that equity regards as done that which ought to be done, I find myself unable to accede to the applicant's prayers for the following reasons:
 - a. The amended certificate of confirmation of grant dated 28th April, 2023, has already made provision for bonafide purchasers through a trust arrangement. This arrangement provides adequate protection for the applicant's claimed interests.
 - b. The applicant has not demonstrated any inadequacy in the trust arrangement that would necessitate the drastic remedy of revoking or varying the confirmation of grant.



- c. The proper course for the applicant is to pursue their rights through the mechanism already provided in the confirmation of grant, namely, by engaging with the appointed trustees who hold the property for the benefit of bonafide purchasers.
12. Though it is reasonably plain that the applicant is distinctively recognized as a beneficiary in the Certificate of Confirmation of grant issued by Mohammed Ibrahim J, as he then was dated 28th July, 2008 and one issued Omondi H.A. as she then was issued on 2nd April, 2019 and the most recent issued by this court on 13th December, 2022 he has seen it fit to invite this court that he has a locus standi to file a separate Succession Cause on the same subject matter fully determined by this court at various forums. There is nothing distinct in character for this court to occasion severance of its shares from the overall estate of the late Malakwen Sisiwa.
13. In the aforementioned certificates of confirmation of grant, there is a detailed inventory of assets, beneficiaries, creditors, liabilities and dealings of the estate subject matter of this cause. There is no any other shortcut for the applicant to pursue the distribution matrix save within the context of the already Certificates of confirmation of grant. Thereafter, Section 83(e) and (g) of the *Law of Succession Act* shall require the administrators within six months from this declaration to produce to the court a full and accurate inventory of all the dealings on distribution therewith up to the date of account to this court. From the record, it has been a breach of the statutory provisions on the administration of the estate of the deceased. The delay of more than ten years should have been avoided if the administrators lived up to the undertaking of administering the estate faithfully and diligently as required by the law. There is undue delay which remains unexplained which has occasioned prejudice and injustice to the beneficiaries.
14. The non-implementation of the Certificate of Confirmation of Grant which is a final decree of any probate cause of action is justice delayed and justice denied to the beneficiaries. In my view, delay in dispensation of justice more specifically to judgments arising out of intestate and probate succession generally devalues court decisions and creates anxiety among the beneficiaries upon which their rights of inheritance have been determined. It is pertinent to note that inheritance rights are hinged in Art. 43 of *the Constitution* on Economic and social rights. In the instant case, the court had pronounced itself on the matter way back in 2008 and yet the record shows a re-litigation on the same subject matter with substantially nothing new to primarily impeach the initial certificate of confirmation of Grant issued by Mohammed Ibrahim J as he then as a session judge before this court. It is instructive to note that delay in succession matters and other similar cases gives a wrong signal of justice delivery system and puts the judiciary to public criticism losing the confidence of the common people as their last resort, which is regarded as a temple of justice.
15. It is important to remember that delays in resolving succession matters affect a wider spectrum of dependants given the nature of the rights fashioned in both probate and intestate estate. One cannot help but to wonder if there will be a time in Kenya's legal system when succession matters will be resolved within the statutory timelines, fairly, efficiently, effectively and proportionately to the codified time set by the legislature.
16. Specifically, two important considerations are of significance; First, the Succession Code and its substantive and procedural provisions have left nothing to chance on the administration of justice on inheritance matters but to my bewilderment this is one branch of law the hope of the benefits of justice remain in the realm of the unknown for justice delayed and denied is more of the norm than the exception. If the applicant in this case would have borne in mind of this maxim: justice delayed is justice denied, he could have gone for the right to a speedy transmission of the estate other than limiting its execution by filing multiplicity of applications. One wonders, in a succession matter, if the



beneficiaries have been identified and their rights to property quantified, what else is there to litigate as a justiciable issue before a court of law.

17. For emphasis purposes, where a succession court has crafted a mechanism for protection of third party interests, such mechanism should be given an opportunity to operate before being declared inadequate.
18. Given the above background, I decree the following orders:
 - a. The application dated 26th July, 2024, is hereby dismissed.
 - b. The applicant's interests are sufficiently protected by the trust provision in the amended certificate of confirmation of grant dated 28th April, 2023.
 - c. The applicant is at liberty to engage with the appointed trustees regarding their interests in the subject properties.
 - d. Given the nature of the matter, each party shall bear their own costs.

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

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R. NYAKUNDI

JUDGE

