



**In re Estate of Kombo Mulinge alias Bernard Mulinge Kombo (Deceased) (Succession Cause 228 of 2010) [2024] KEHC 14126 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14126 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
SUCCESSION CAUSE 228 OF 2010**

**FR OLEL, J**

**NOVEMBER 14, 2024**

**IN THE MATTER OF THE ESTATE OF KOMBO MULINGE  
ALIAS BERNARD MULINGE KOMBO (DECEASED)**

**BETWEEN**

**REGINA N'THENYA KOMBO ..... 1<sup>ST</sup> ADMINISTRATOR**

**TECKLA KAVEKE KOMBO ..... 2<sup>ND</sup> ADMINISTRATOR**

**AGNES MUTINDA KOMBO ..... 3<sup>RD</sup> ADMINISTRATOR**

**ANNAH KATUNGE KOMBO ..... 4<sup>TH</sup> ADMINISTRATOR**

**AND**

**SOPHIA NDUKU KOMBO ..... RESPONDENT**

**RULING**

**A. Introduction**

1. Before court for determination is the summons application dated 18<sup>th</sup> April, 2023 filed by the 1<sup>st</sup> to 4<sup>th</sup> Administrator/Applicants pursuant to provisions of Section 47 and 83 of the *law of Succession Act*, CAP 160, Laws of Kenya, Rules 44(1) and 49 of the probate and administration Rules and all other enabling provisions of law. The specific prayers sought were that;
  - a. The Respondent be compelled to hand over to the Administrators/Applicants all title deeds and ownership documents of the late Kombo Mulinge alias Bernard Mulinge Kombo for purposes of transmission and transfer to the requisite beneficiaries as per the grant issued on 7<sup>th</sup> December 2022.
  - b. In the alternative to prayer 1 above, an order do issue to the county lands registrar to issue duplicate title deeds as if the same had been lost or misplaced.



- c. Costs of this Application be provided for.
2. The application is supported by the grounds on the face of the said Application, the supporting affidavit dated 18<sup>th</sup> April 2023 and further Affidavit dated 30<sup>th</sup> November 2023 signed by all the Applicants, while the said application is opposed by the Respondent through his replying Affidavit dated 21<sup>st</sup> July 2023.

## **B. Determination**

3. I have reviewed all the pleadings filed in support of the application, and in opposing thereto, the submissions filed by both parties and deduce that the only issues for determination are, whether the orders sought should be allowed and/or whether the court should hold this matter in abeyance pending the determination of the respondent's Application for stay of the Ruling delivered on 7<sup>th</sup> December 2023 pending before the court of Appeal.
4. Section 83 of the *law of Succession Act*, Cap 160 further provides for the duties of the administrator(s);  
Duties of personal representatives' Personal representatives shall have the following duties—
  - a. to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;
  - b. to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
  - c. to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
  - d. to ascertain and pay, out of the estate of the deceased, all his debts;
  - e. within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
  - f. subject to section 55, to distribute or to 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 on intestacy, as the case maybe.
  - g. within six months from the date of confirmation of the 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 the court a full and accurate account of the completed administration;
  - h. to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
  - i. to complete the administration of the estate in respect of all matters other than continuing trusts 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.

5. It is obvious that the powers of the administrators under the *Law of Succession Act* are vast, but they must ensure that the estate of the deceased is well looked after, collect and collate the assets of the estate, and after confirmation of the grant, to vest a specific legacy in the legatee thereof. Further, they must also complete administration within six months from the date of confirmation of the grant, or such longer period as the court may allow, in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.
6. The Administrators therefore should have distributed the estate as provided under the distribution schedule within six months after the protest had been dismissed and the grant confirmed. This has not been done and it runs foul of the express provisions of Section 83(g) of the *Law of Succession Act*.
7. The Respondent did not deny holding various title deeds/ lease certificates of the deceased herein but did contend that he had filed an Appeal against the ruling of the trial court at the court of Appeal and also applied for stay of execution of the said ruling dated 7<sup>th</sup> December 2022, which Application was awaiting determination.
8. The respondent indeed has a right to be heard as protected by Article 50(2) of *the constitution* of Kenya, while at the same time, the court has to be alive to the Applicant's contention that they have been in court corridors for the last 13 years and it was time they too got closure by having distribution effected as directed by the court.
9. Based on Section 47 of the *Law of Succession Act*, and provisions of Rules 73 of the probate and Administration Rules, the Court ought when confronted with such circumstances to consider the twin overriding principles of proportionality and equality of arms which are aimed at placing the parties before the Court on equal footing and see where the scales of justice lie considering the fact that it is the business of the court, so far as possible, to secure that any transitional motions before the Court do not render nugatory the ultimate end of justice.
10. The Court, in exercising its discretion, should therefore always opt for the lower rather than the higher risk of injustice. See *Suleiman vs. Amboseli Resort Limited* [2004] 2 KLR 589.

### **C. Disposition**

11. Flowing from the above, the orders that commend themselves under the circumstances herein are as follows;
  - a. The Application dated 18<sup>th</sup> April 2023 has merit and is allowed in terms of prayer (1) and (2).
  - b. The Respondent is directed to deposit all title deeds, lease certificates, and/or ownership documents which he holds of the late Kombo Mulinge alias Bernard Mulinge Kombo with the Deputy Registrar of this court within the next 30 days from the date of this Order.
  - c. If the Respondent fails to comply as directed above and upon confirmation of lack of compliance by the Deputy Registrar, the Machakos county Lands Registrar will Gazatte all the said title deeds/lease certificates held by the respondent as lost and will issue fresh title deeds/ lease certificates to the Petitioners/Administrators herein.
  - d. That as the above orders are implemented, there will be no transfer by transmission effected until the Respondent's Application for stay of execution of the Ruling dated 7<sup>th</sup> December 2023 is heard and determined either way by the Court of Appeal.



d. This being a family matter, each Party will bear their own costs.

12. It is so Ordered.

**RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**FRANCIS RAYOLA OLEL**

**JUDGE**

**DELIVERED ON THE VIRTUAL PLATFORM, TEAMS THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2024.**

In the presence of;

No appearance for Applicant

No appearance for Respondent

Susan/Sam Court Assistant

