



**In re Estate of Munanga Musa Otatwa (Deceased) (Succession Cause
215 of 2003) [2024] KEHC 14481 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14481 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 215 OF 2003
SC CHIRCHIR, J
NOVEMBER 14, 2024**

IN THE MATTER OF THE ESTATE OF MUNANGA MUSA OTATWA (DECEASED)

BETWEEN

SAMSON OTATWA MUNANGA 1ST PETITIONER

GRACE KHEBALI MUNANGA 2ND PETITIONER

AND

TOM MBOYA TSALIA 1ST OBJECTOR

SAUL TSALIA LUTATWA 2ND OBJECTOR

RULING

1. What is coming up for determination is the summons for confirmation of Grant dated 5/2/2020.
2. The matter was first heard by Justice Musyoka. In his ruling delivered on 19/3/2021, the Judge declined to confirm the grant on grounds that the Administrator had failed to make a disclosure of the beneficiaries of the Estate. The Judge noted inter alia, that there were discrepancies between the particulars of the beneficiaries as indicated in the petition and on the summons for confirmation.
3. The Court therefore deferred the confirmation, and directed the Administrator to file a further Affidavit for purposes of making a full disclosure.
4. In an Affidavit sworn on 8/7/2021 and filed the same day by the Administrators, they provided further particulars, and justification on the mode of distribution.
5. In the consent accompanying the summons for confirmation, the property of the Estate was stated as Butsotso/Indangalsia/349 (The suit property) and it was to be shared by 16 beneficiaries. The consent is signed by all the beneficiaries.



6. A protest was filed by one Tom Mboya Tsalia and Saul Tsalia Oatwa. The protest is dated 19/9/2023. On the protest the protestors accused the petitioners of perennial disobedience of court orders. They further took issue with the unequal distribution of the estate property.
7. The confirmation and protest was canvassed by way of written submissions.

Protestor's Submissions

8. After a long narrative on the history of the land parcel, and attendant disputes, the protestors submit that the proposed mode of distribution was not compliant with the directions earlier given by the court; that the Administrators have since sold two parcels of land belonging to the estate. That they are entitled to 10 acres from the suit property.

Administrators' Submissions

9. It is the Administrator's submission that the heirs of the deceased are satisfied with the mode of distribution proposed, and have demonstrated their satisfaction by appending their signatures on the consent form. It is further stated that on 2/10/2023 the deceased heirs were all in court and confirmed the terms of the consent.
10. It is further pointed out that the protestor's Affidavit of protest do not disclose any legal interest in the deceased's property neither are they claiming that they are.
11. The Administrators further state that an earlier claim by the protestors to the deceased's property was resolved by the Environment and Land court through a Judgment delivered on 27/7/2021, in which the court dismissed the protestor's claim; that an attempt to review the Judgment was equally dismissed by the same court on 23/10/2023.

Determination

12. I have considered the summons, the various Affidavits filed in support of, or protest against the summons. I have also perused Justice Musyoka's Ruling. In my view ,only two issues lend themselves for determination ,that is:-
 - a. Whether the protestor have a stake in the deceased's estate.
 - b. Whether the grant should be confirmed.

Whether the Protestors have a stake in the Deceased's estate.

13. I have carefully read the Affidavit of protest and I have noted that the protestors have not stated what their interest is in the deceased's estate . They have not also stated to this court how they are related to the deceased. They have only stated that the distribution is unequal; that some of the deceased's heirs have been left out, and that some of the heirs are illiterate and are being taken advantage of by the literate heirs.
14. However , the alleged heirs have not complained, and there is no evidence that the protestors are claiming on their behalf. The beneficiaries also attended court and they all confirmed that they were in agreement with the mode of distribution set out in the consent 5/2/2020, and filed in court the same day.
15. However , what appears to be the protestor's interest in the estate comes out in their submissions where they have stated that they are entitled to 10 acres out of the suit property. This interest was never



disclosed in the Affidavit to enable the opposite parties to respond to this claim . In any event , it is trite law that submissions are not evidence. I therefore decline to make a determination on this issue.

16. Further , it quickly emerged that their alleged stake had been litigated upon in Kakamega ELC Case No. 110/2019 between the protestors and the Administrators herein. In a Judgment delivered on 27/7/2021, the ELC Judge , dismissed the protestor's claim against the deceased's Estate. An attempt to review the judgment was again dismissed on 18/10/2022.
17. It is obvious that the protestor's protest is an attempt to drag this court to issues that had already been determined, by a court bestowed with the jurisdiction to deal with. I decline the invitation.
18. In short the protestors have failed to demonstrate that they have any claim against the estate.

Distribution of the Estate

19. The summons for confirmation was accompanied by a consent signed by all the beneficiaries. Further on 2/10/2023 the beneficiaries appeared in court and confirmed the terms of the consent without a single dissent. Consequently, this court will adopt the consent of distribution as stipulated in the consent dated 5/2/2020 .
20. In the end I make orders as follows;-
 - a. The protestors protest herein is hereby dismissed.
 - b. The grant of letters of Administration issued on 18/9/2019 to Grace Khebali Munaga and Samson Oatwa Munanga is hereby confirmed.
 - c. The distribution of land parcel No. Butso/ Indangalsia/349 shall be as follows:
 - Grace Khebali Mununga- 0.5 acres
 - Samson Oatwa Munanga- 9.5 acres
 - Wycliffee Munanga-1.75 Acres
 - Albert Murunga Munanga- 1.75 acres
 - Patrick Moi Munanga- 1.75 Acres
 - Joseph Oponyo Munanga -1.75 Acres
 - Gabriel Andala Munanga- 4.5 Acres
 - Melisa Owenza Munanga- 1 Acre
 - Dickson Makunzo Pkure- 2.5 Acres
 - Robert Eronde Okore- 1.0 Acres
 - Henry Tsalia Okure- 2.0 Acres
 - Jane Chapia- 0.5 Acres
 - Braitone Andole Jabia-1.0 Acres
 - Moses Munanga Jabia- 1.0 Acres
 - Edward Shapaya Andala-0.5 Acres
 - Godrey Achevi Achesa- 0.5 Acres

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 14TH DAY OF NOVEMBER 2024.



S. CHIRCHIR

JUDGE

In presence of:-

Godwin Luyundi- Court Assistant

Mr. Isiaho for Mr. Mukavale J for the Administrators

