



**In re Estate of Anne Atemo Makoba (Deceased) (Succession Cause
304 of 2014) [2024] KEHC 14193 (KLR) (5 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14193 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 304 OF 2014
G MUTAI, J
NOVEMBER 5, 2024**

BETWEEN

JA[HET OMBOKO MAKOBA BENEFICIARY

AND

JANEPHER NYAPELA MAKOBA 1ST EXECUTOR

ANTHONY FRANCIS MAKOBA 2ND EXECUTOR

AND

KAKI MUGALO & COMPANY ADVOCATES INTERESTED PARTY

RULING

1. The grant in respect of the deceased's estate was confirmed on 26th October 2022. The court identified the beneficiaries of the deceased's estate as being Janepher Nyapela Makoba, Anthony Francis Makoba, Japhet Omboko Makoba and Margaret Musyawa. Each beneficiary got $\frac{1}{4}$ of the estate. The assets forming the estate were listed in the Certificate of Confirmation of Grant.
2. The basis upon which the court confirmed the grant was the consent entered into by Janepher Makoba, Anthony Makoba, Akanga Alera & Co Advocates and the firm of Kakai Mugalo & Co. Advocates who acted for the estate of Leo Franz Brandenburg, the former husband of the deceased. The latter was involved in the litigation surrounding this estate as he co-owned some assets with the deceased pursuant to a judgment entered by the Court in a matrimonial property cause.
3. From a careful perusal of the file, it would appear to the court that what remains outstanding at this point is the distribution of the following assets to the deceased's beneficiaries: -
 - a. $\frac{1}{2}$ share of Lamu/Mpeketoni/Plot No 85;
 - b. $\frac{1}{2}$ share of Lamu/Mpeketoni/Plot No 136;



- c. ½ share of Lamu/Mpeketoni/Plot No 137;
 - d. ½ share of Lamu/Mpeketoni/Plot No 156;
 - e. ½ share of Lamu/Mpeketoni/Plot No 157;
 - f. ½ share of Lamu/Mpeketoni/Plot No 161;
 - g. ½ share of Title No. Lamu/Lake Kenyatta/726;
 - h. Whole of Lamu/Lake Kenyatta/2697
4. In the consent signed on 31st August 2022, it was agreed that Japhet Omboko Makoba owed the estate of the deceased ½ the rent collected from 9th February 2016 to 31st December 2021, which amount is now reckoned to be Kshs 6,300,000/-. He owes a similar amount to the estate of Leo Franz Brandenburg (deceased). Japhet Omboko does not deny this.
 5. Based on what is stated in paragraph 4 above, this court directs that Japhet Omboko Makoba deposits the same into the estate collection account within 30 days of the date hereof, failing which the said amount shall be recovered from his entitlement to the remaining of the estate. In addition, he will be required to indemnify the other beneficiaries against any claims that the estate of Leo Franz Brandenburg may have in respect of its share of the rent proceeds utilized by Japhet Omboko Makoba without authorization.
 6. Regarding the amount due to the estate from the sale of Plot No MN/1/1056, the court has reviewed the tabulation made by Kakai Mugalo & Co. Advocates. The court notes that the said firm of advocates represented the deceased's husband and not the deceased. That notwithstanding, the cost of the transaction has been transferred wholly to the estate of the late Anne Atemo Makoba (deceased). I do not think there was an advocate/client relationship between the said law firm and the deceased, nor has a justification been provided for this.
 7. To enable the court to determine if the said costs are lawful, the firm of Kakai Mugallo & Co. Advocates is hereby directed to file an affidavit by its partner annexing or providing: -
 - a. Evidence of instructions issued by the deceased to the said firm of advocates;
 - b. Agency agreement, and evidence of payment of agency commission;
 - c. Evidence of payments for auctioneer's charges, disbursements, police hire charges, valuation fees and burial expenses. Justification for condemning the estate of the deceased to pay for this, as opposed to the instructing client doing so, should be provided;
 - d. Evidence that the four parcels of land in Mpeketoni were forfeited by Leo Franz Brandenburg to the estate and the current valuation of the same;
 - e. The fate of Toyota Harrier KBA 053C; and
 - f. Justification for having the estate of the deceased pay for the travel costs of Kakai Kissinger, advocate.
 8. I direct that the said affidavit be filed within 14 days. Upon filing the affidavit, the executors shall have 7 days to file an affidavit in response.
 9. Mention to confirm compliance and for further direction on 2nd December 2024.
 10. As this is a family matter, each party shall bear its own costs.



11. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 5TH DAY OF NOVEMBER 2024. DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Janepher N. Makoba, (pro se litigant) (present);

Mr Ahmed, holding brief for Mr Akanga, for Japhet Makoba;

Ms Buchochoch, holding brief for Mr Mugallo for the estate of Leo Franz Brandenburg;

Arthur – Court Assistant.

