

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

SUCCESSION CAUSE NO.28 OF 2013

IN THE MATTER OF THE ESTATE OF LELEI ARAP MUTAI (DECEASED)

ESTHER CHALANGAT MUTAI.....1ST PETITIONER/APPLICANT

HAMILTON KIBET TANUI.....2ND PETITIONER/APPLICANT

VERSUS

DAVID TANUI LELEI.....3RD PETITIONER/RESPONDENT

RULING

1. Before me is a Summons for Confirmation of Grant of Letters of Administration dated 10th May 2018. It was filed with a consent for Confirmation of Grant under Rule 40 (8) of the Probate and Administration Rules which was signed by Hellen Chepkoech Mutai, Eric Kiprotich Tanui, Margaret Cheronon Koech, Mike Kiprono, Martin Kipkurui Lelei and Kiprotich Lelei- six of the listed 19 beneficiaries intended to sign their consent.
2. It was filed with an affidavit in support of Summons for Confirmation of Grant sworn on a date not indicated in 2017 by Esther Chalangat Mutai and Hamilton Kibet Tanui which contains a proposed mode of distribution on one piece of land L.R. No.I.R 20542 to several people some of them not listed as beneficiaries or survivors of the deceased. There is no consent filed by beneficiaries to the proposed mode of distribution.
3. The Summons for confirmation of Grant of Letters of Administration is opposed through an affidavit of protest against confirmation of grant sworn by David Tanui Lelei on 18th April 2017 who claimed that there was an agreement on distribution per minutes of a family meeting held at the District Commissioner's Office Kipkelion on 11th March 2011, which he also filed. These minutes do not refer to identifiable pieces of land but to two farms one at Malagot Kipkelion (182 acres) and the other being Nakuru Farm – Ingobor (28 acres), as well as Litein town plot, and Shirikisho Plot Kipkelion township. The said David Tanui Lelei also filed a preferred mode of distribution dated 23rd March 2018.
4. Initially counsel for the petitioners and counsel for the objector wanted the matter to proceed by tendering viva voce evidence. They later changed that position and agreed to file written submissions, which they did and asked this court to make a decision on the same.
5. I am not able to make a decision on the Summons for Confirmation of Grant of Letters of Administration. This is for the following reasons. Firstly, the affidavit in support of the Summons for Confirmation of Grant was not dated, and it has to be dated for it to be a proper affidavit. The second reason is that the law requires that consent be filed by all the beneficiaries both to the proposed Confirmation of Grant, and to the proposed mode of distribution. Though the Summons for Confirmation of Grant was signed by some beneficiaries and filed, there is no consent filed to the proposed mode of distribution. With regard to the protest, the proposed mode of distribution of the protestor is not specific nor is it indicated that it is his sole proposed mode of distribution or for the house from which he comes. If it is for that house then there is need for a consent to be filed from those who support the same.
6. As things stand therefore, there are factual issues to be determined as well as omissions made, which mean that the matter is not ripe for the court to make a determination on the application for confirmation of grant as well as the protest on the mode of distribution. If factual matters still remain in dispute, after beneficiaries file their consents or otherwise, then the matter will have to go for viva voce hearing instead of being determined on the basis of submissions of counsel.
7. I thus order that the shortcomings in paragraph 5 above be rectified, and thereafter directions will be given on whether the matter will proceed by *viva voce* evidence or through filing of written submissions.

Dated and delivered at Kericho this 17th December 2019.

George Dulu

JUDGE