



**Republic v District Land Registrar, Kajiado; Olaes (Exparte Applicant) (Judicial Review Miscellaneous Application E001 of 2023) [2024] KEELC 3282 (KLR) (22 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3282 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
JUDICIAL REVIEW MISCELLANEOUS APPLICATION E001 OF 2023**

**MN GICHERU, J**

**APRIL 22, 2024**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO INSTITUTE JUDICIAL REVIEW PROCEEDINGS IN THE NATURE OF MANDAMUS OF STEPHEN KIAMBA LEKISHONI OLAES AGAINST THE DISTRICT LAND REGISTRAR KAJIADO**

**AND**

**IN THE MATTER OF ARTICLES, 10, 23 27, 48 AND 50 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF LAND PARCEL NO. KAJIADO/DALALEKUTUK/10143**

**AND**

**IN THE MATTER OF LAND PARCELS NO. KAJIADO/DALALEKUTUK/10143**

**AND**

**IN THE MATTER OF SECTIONS 60 OF THE LAND REGISTRATION ACT, 2012 LAWS OF KENYA**

**AND**

**IN THE MATTER OF SECTIONS 9 OF THE LAW REFORM ACT, CAP 26, LAWS OF KENYA AND ORDER 53 OF THE CIVIL PROCEDURE RULES**

**BETWEEN**

**THE REPUBLIC ..... APPLICANT**

**AND**

**THE DISTRICT LAND REGISTRAR, KAJIADO ..... RESPONDENT**

**AND**

**STEPHEN KIAMBA LEKISHON OLAES ..... EXPARTE APPLICANT**



## RULING

1. This ruling is on the chamber summons dated 25/7/2023. The summons which is brought under Order 53 Rule (3) of the Civil Procedure Rules, the Judicature Act, the Law Reform Act and all other enabling provisions of the law seeks the following orders.
  1. That the summons be heard *ex parte* for all purposes.
  2. That an order of mandamus be issued to compel the District Land Registrar Kajiado Central (1<sup>st</sup> respondent) to within 14 days, to register the certificate of death of a joint tenant on title No. Kajiado/Dalalekutuk/10143, suit land.
  3. That an order of mandamus be further issued to the District Land Registrar, Kajiado Central to register the applicant as the sole proprietor of the suit land without going through a succession process.
  4. Costs and incidental to the *ex parte* applicant's application be provided for.
  5. Such further and other reliefs and or directions that the court may deem just and expedient to grant.
2. The summons is supported by a verifying affidavit, a supplementary affidavit and four (4) annexures. In summary, the applicant's case is as follows.

Firstly, he and the deceased Kitima Ole Kitaika are registered as owners of the suit land.

Secondly, the joint owner died on 5/8/2016 as per the certificate of death No. xxxx dated 24/8/2018.

Thirdly, by virtue of Section 60 of the Land Registration Act, the applicant is entitled to be registered as the sole proprietor by virtue of the principle of survivorship.

Fourthly, when he presented the application to be registered as the sole proprietor Land Registrar, the said Registrar directed that the applicant should obtain a grant from the succession court. This refusal by the Registrar to allow the applicant's application is what prompted the filing of this summons.

3. I have carefully considered the summons in its entirety including the grounds, affidavits and the annexures, I find that it has no merit for the following reasons,

Firstly, under Section 91(2) of the Land Registration Act, it is provided as follows.

“Except as otherwise provided in any written law, where the instrument of transfer of an interest of land to two or more persons does not specify the nature of their rights, there shall be a presumption that they hold the interest as tenants in common in equal shares”.

This means that the tenancy between the applicant and deceased is not a joint tenancy. The two are tenants in common.



4. Secondly, Section 91(5) of the same Act provides as follows.

If any land, lease or charge is owned in common, each tenant shall be entitled to an undivided share in the whole and on the death of a tenant, the deceased's share shall be treated as part of their estate”

My understanding of the above provision is that the deceased is entitled to 50% of the suit land and it should be inherited by his lawful dependants and not his co-tenant unless the co-tenant is a dependant.

For the above stated reasons, I dismiss the summons dated 25/7/2023.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 22<sup>ND</sup> DAY OF APRIL 2024.**

**M.N. GICHERU**

**JUDGE**

