



REPUBLIC OF KENYA



**In re Estate of Wilfred Naitiri Ketere (Succession Cause 1303 of 1997)
[2025] KEHC 1763 (KLR) (Family) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1763 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1303 OF 1997
PM NYAUNDI, J
FEBRUARY 27, 2025**

RULING

1. There are two applications for determination. The first, is the Application dated 21st November 2024 presented under Order 9 rule 9 of the Civil Procedure Rules and Section 47 of the [Law of Succession Act](#) in which, the Applicants Bernard Ketere and William Ketere, seek leave of the Court to allow the firm of M/S Ochwangi & Co Advocates to represent them herein in place of Kantai & Co. Advocates.
2. The Second Application is dated 31st October 2024 and is presented by Leonard Lenana Ketere under the provisions of Article 159 (2) (d) of [the Constitution](#) of Kenya 2010, Section 47 of the [Law of Succession Act](#), Rule 73 of the Probate and Administration Rules, Order 40 rule 1, Order 44, Order 51 Rules 1,3, & 4 of the Civil Procedure Rules 2010. Sections 1A,1B,3,3A & 63 (e) of the [Civil Procedure Act](#), [Land Registration Act](#). No. 3 of 2012 and the [Land Act](#) No. 6 of 2012.
3. The Applicant in application dated 31st October 2024 seeks the following orders-
 1. Spent
 2. That an Order do issue compelling the Respondent/ Administrators herein, to transfer ten (10) acres from parcel of land known as Trans Mara/ Oloomisimis/269, which forms part of the estate of the Deceased, and register it in the name of Leonard Lenana Ketere the Applicant herein; and a surveyor appointed for that purpose should file survey documents in Court to confirm that the land is distributed in accordance with the orders of the Court.
 3. Spent
 4. That an Order be issued by this Honourable Court directing the 1st and 2nd Respondents to execute, deliver and hand over transfer documents, the title deed and application for consent(s) in respect of the suit property, namely Trans Mara/ Oloomisimis / 269, in favour of the Applicant, failure of which, the Deputy Registrar of this Honourable Court be empowered and authorised to execute the documents of transfer in favour of the Applicant.



5. Costs.
4. In affidavit sworn on 31st October 2024, he avers that the Executors are yet to transmit to him his bequest in accordance with the Certificate of Confirmation of Grant dated, 19th March 1999.
5. Specifically, he contends that vide his Will dated 23rd September 1996, the deceased bequeathed him 10 acres out of Trans Mara/ Oloomisimis / 269
6. The application is vociferously opposed by the respondents who are the executors of the Will. In particular, they contend that the matter is concluded and therefore the claim by the Applicant is not properly before the Court.
7. Having considered the pleadings herein, the Submissions filed, authorities and relevant law I discern the following as the issues for determination
 1. Whether the Application dated 21st November 2024 has merit
 2. Whether Application dated 31st October 2024 has merit
 3. Who should pay costs
8. On the 1st issue the Application is allowed and M/S Ochwangi & Co Advocates are deemed to be properly on record.
9. On the 2nd issue, the gist of the matter is that the Applicant stakes a claim to 10 acres from the portion of land referred to as Transmara/ Olomisismis/269. The basis of the claim is that it was bequeathed to him by the deceased,
10. The success of this application therefore turns on the provisions of the deceased's will dated 23rd September 1996, the deceased provided as hereunder-

My properties are-

1. LR No. Ngong/Ngong/9532 Measuring six acres or thereabouts
2. Plot No. 24 Kilgoris on which is erected commercial building
3. Eighty acres of land at Oloosayet, Kilgoris

I Exchange with my son Bernard Lekishon Keteremy sixty acres of land of a total acreage of Eighty acres at Oloosayet, Kilgoris in Exchange for his 60 acres of land at Oloomisimis, Kilgoris. From the remainder of Twenty acres of my land I Give Devise And Bequeath to my son Leonard Lenana Kete Ten acres and ten acres to my grandson Leyian Sankona.

Measuring Sixty acres which I have exchanged with my son Bernard Lekishon Kete (located at Oloomisimis, Kilgoris) I Give And Bequeath to the following persons the following parcels: -

1. To my son Dennis Memusi Kete twenty -five acres
2. To my son Lemeria Kete Ten acres
3. To my son Obiki Kete fifteen acres
4. To my grandson Saruni Kete ten acres

I Give Devise And Bequeath to my son Dennis Memusi Kete two acres to be excised from the original LR No. Ngong/ Ngong/9532



I Give Devise And Bequeath to my son William Sankona Ketere Four acres to be excised from LR No. Ngong/ Ngong/9532.

I Give Devise And Bequeath to my sons William Sankona Ketere and Mernard Lekishon Ketere Plot No. 24 Kilgoris together with all the improvements thereon to own in joint and equal shares.

I Declare And Direct that my body shall be buried at the farm of my son Bernard Lekishon Ketere at Oloosayet, Kilgoris acres and to my grandson Leyian Sankona. (Emphasis mine).

11. The bequest to the Applicant is out of the parcel of land at Oloosayet and not Oloomisimis. The parcel at Oloomisimis comprised 60 acres, he allocated it as follows

Dennis Memusi Keter twenty -five acres

Lemeria Keteria Ten acres

Obiki Keter fifteen acres

Saruni Keter ten acres

Total 60 acres

12. The 2 parcels of land are distinct and on this ground the Application will fail. I observe that the Executors are yet to file their account as required under Section 83 (g) of the *Law of Succession Act* which provides –

Duties of personal Representatives

Personal Representatives shall have the following duties-

.....

- (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; .

13. In the circumstances I will direct as provided for under Section 83 (i) that the Executors provide to Court a full and accurate account of the completed administration with evidence of transmission to the respective beneficiaries as provided for under the will and the Certificate of Confirmation of Grant within 45 days.

14. As the Application was in part necessitated by the failure of the Executors to provide the account of administration as required by law and the Applicant misapprehending the bequest made to him by the deceased, each party will bear their own costs.

15. The matter will be mentioned on 13th May 2025 to confirm compliance.

It is so ordered

DATED, SIGNED AND DELIVERED ON THE VIRTUAL PLATFORM, AT NAIROBI THIS 27th DAY OF FEBRUARY, 2025.

PATRICIA NYAUNDI

JUDGE

In the presence of;



Nick Ketere in person
Fardosa Court Assistant

