



**In re Estate of Alloys Mamboleo alias Alloys Mamboleo Morira (Deceased)
(Succession Cause 595 of 2012) [2025] KEHC 3866 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3866 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
SUCCESSION CAUSE 595 OF 2012**

**TA ODERA, J
MARCH 27, 2025**

**IN THE MATTER OF THE ESTATE OF ALLOYS MAMBOLEO
ALIAS ALLOYS MAMBOLEO MORIRA (DECEASED)**

BETWEEN

JOHN KENNEDY MAMBOLEO PETITIONER

AND

JANE NYANCHOKA ALOYS APPLICANT

RULING

Introduction

1. This ruling is in regard to the application dated 17th December, 2018 filed by the 2nd Petitioner seeking to have the grant issued to her and the 1st Petitioner on 25th June, 2018 confirmed. In the affidavit in support of the 2nd Petitioner averred that the deceased left the following properties to be shared amongst his two houses;
 - a. LR No. West Kitutu/Bugusero/1047 measuring approximately 1.7 hectares
 - b. LR No West Kitutu/Bugusero/1067 measuring 0.27 Hectares registered in in his name and that of Ochoi Morira in half share each
 - c. LR LR No West Kitutu/Bugusero 1064 measuring 3.4 hectares
2. The Applicant proposed that the estate should be shared equally as follows;
 - a. Parcel 1047 remain with the applicant /2nd petitioner
 - b. The applicant/2nd petitioner to take the half share that the deceased has in parcel 1067 which measures approximately 0.135.



- c. That the Applicant/2nd petitioner to get 0.78 of parcel 1064 while the 1st Petitioner and his siblings to get 2.62.
3. She contended that total acreage cumulatively shall be 2.615 for her house and 1st house represented by the 1st Petitioner shall take be 2.62 hectares.
4. She contended too that all other beneficiaries have consented to the proposal except the 1st Petitioner who lives in the USA.
5. In response one Florence Magoma Mamboleo filed a replying Affidavit of objection dated 7th April, 2019 wherein she averred that the Applicant/ 1st petitioner failed to disclose all the properties of the deceased being;
 - a. LR No. West Kitutu/Bugusero/1047 measuring approximately 1.7 hectares
 - b. LR No West Kitutu/Bugusero/1067 measuring 0.27 Hectares
 - c. LR No West Kitutu/Bugusero 1064 measuring 3.4 hectares
 - d. LR No West Kitutu/Bugusero 2105 measuring 1.3 hectares
6. She disclosed that the Applicant is intermeddling with the estate subdividing parcel 1047 into three parcels being 8992, 8993 and 8994. Also, that applicant has sold of parcel 2105 and subsequently subdivided it into parcels 10123, 10124 and 10125.
7. She averred that her father had during his lifetime distributed her property amongst her two houses as follows:
 - a. The 1st house was allocated parcels of land 1064 and 1067
 - b. The 2nd house parcel 1047 and 2105.
8. She insisted that the Applicant was not entitled to any share of parcel 1064 and 1067.
9. In reply to the replying affidavit the Applicant filed a supplementary affidavit where she averred that parcel 2105 was not part of the estate of the deceased as the same was originally registered in the name of Charles Nyangaresi who sold the same to her and she later sold the same to the Henry Mogaka Mogeni Magaka. She also denied the allegations of her subdividing parcel 1047. Further that denied that the deceased had divided the properties in the manner claimed in the replying affidavit. She insisted that the only fair distribution of the distribution of the estate is the equal distribution of the same as she had proposed.
10. In the course of the proceedings, it became apparent that indeed parcel 1047 had been subdivided and transferred to the applicant and a third Party. By consent of the parties the court later directed that the subdivisions be revoked and the property to revert back to the estate. Equally during the proceedings of this court, it emerged that parcel 2105 was subject a court case pending hearing and determination and was not available for immediate distribution and the parties agreed that this court proceeds with partial confirmation of grant for parcel 1064, 1047 and 1067.
11. Since the parties could not agree on how on how the 3 parcels (1047, 1064 and 1067) were to be distributed to the beneficiaries of the estate of the deceased, this court directed that the objection proceeds by way of viva voce evidence. The Applicant called three witnesses while the 1st Petitioner called two witnesses. Both parties and their witnesses reiterated the averments in the affidavits. For instance, the Applicant reiterated that she should get parcel 1047 in its entirety, the deceased's ½ share of parcel 1067 and a 0.78 hectares share of parcel 1064. The 1st Petitioner on his part maintained the



- position that the deceased had already settled his two houses in their respective properties wherein the applicant was settled on Parcel 1047 and 2105 while their house was settled in parcel 1067 and 1064.
12. During the objection proceedings, conflicting positions arose regarding parcels 1064 and 1067. Regarding parcel, 1064 while the 1st Petitioner claimed that their house was settled on it entirely by the deceased while PW2 one Andrew Ochoi Mamboleo stated that the property is occupied by both families and that his late brother who died in 2012 has his home there. PW2 also claimed that there is a boundary dividing the property into two which boundary has always been there. On land parcel 1067, it is clear that the said land is co-owned by deceased and one Ochoi Morira in equal shares and the 1st petitioner claims that Ochoi Morira was bought out by deceased while the Applicant and PW2 insisted is still intact and that deceased has only ½ a share in it.
 13. Given the two conflicting positions this court holds the position for there to be a fair distribution of the estate that takes into consideration the positions that two parties hold in regards to parcel 1064 and 1067 and that the land is co -owned as per the official search, there is need for this court hear the said Ochoi Morira to clear the allegation by the 1st Petitioner that his share was bought out by the deceased. There is equally need for this court to conduct a ground visit of parcel 1064 and 1067 to confirm the occupation on the ground before this court can proceed with distribution.
 14. From the forgoing therefore, the court directs as follows;
 - i. That the Deputy Registrar of this court, to make arrangements with County surveyor and the Land Registrar, Kisii visit parcel 1064 and 1067 to confirm the ground.
 - ii. Both Houses and Ochoi Morira be represented during the said visit.
 - iii. The costs of the visit shall be borne by the estate.
 - iv. The matter shall be mentioned on 7.7.25 to confirm compliance
 - v. The Police s shall provide security for the visit.
 - vi. That summons to be served upon Ochoi Morira or his representatives to appear in court on 7.7.25 confirm whether in deed his share was bought out as alleged by the 1st Petitioner.
 - vii. Mention on before DR to confirm date of the visit 22.4.25
 15. Orders accordingly

T.A ODERA

JUDGE

27.3.25

DELIVERED VIRTUALLY VIA TEAMS PLATFORM ON THIS 27TH DAY OF MARCH 2025 IN THE PRESENCE OF:

Otieno for Petitioner

N/A for Respondent

Court Assistant - Oigo

