



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Sabastiano Ochoko (Deceased) (Succession Cause
49 of 2013) [2025] KEHC 4933 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4933 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 49 OF 2013
WM MUSYOKA, J
APRIL 25, 2025**

RULING

1. The application, that I am called upon to determine, is dated 22nd November 2024. It is at the instance of Sylvanus Ochoko Sebastian. It principally seeks cancellation of the subdivisions of South Teso/Angoromo/5X1, being South Teso/Angoromo/1XX12 to 1XX19, and reversion of the registration of the property to South Teso/Angoromo/5X1, to facilitate registration of a new grant.
2. According to the applicant, the grant herein was made in 2014, and was confirmed, and the estate transmitted, by way of creation of South Teso/Angoromo/1XX12 to 1XX19, out of South Teso/Angoromo/5X1. The grant made to the petitioner was rectified, and a new one was issued, on 23rd September 2019, in the name of the petitioner. He avers that he desires to register the certificate of confirmation of grant, which cannot be done unless the subdivisions are cancelled, and the property reverted to South Teso/Angoromo/5X1.
3. I cannot pretend to understand what the applicant is saying in his application, nor what he seeks from the court, and I will have to review the entire record to get an insight into what has been happening in the matter.
4. The deceased herein died on 6th February 1985. Representation to the estate was obtained by one Sylvanus Ochoko Sebastian, who I suppose is the applicant herein, on 18th June 2013, and a grant was issued to him, dated 29th July 2013. He had that grant confirmed on 12th June 2014, vide an undated application filed herein on 22nd January 2014. The estate, South Teso/Angoromo/5X1, was distributed amongst some 8 individuals, and a certificate of confirmation of grant was issued, dated 14th June 2014. The applicant herein then filed an application, dated 9th August 2016, to have the distribution revised, to accommodate a ninth beneficiary. That was allowed on 23rd September 2019, and a certificate of confirmation of grant was issued, bearing an even date. The applicant would like the transmission reversed, so that the property can be distributed in line with the certificate of confirmation of grant dated 23rd September 2019.
5. Should I grant the order sought? No, I should not. The primary function of a probate court is distribution of the assets of the estate. That happens at confirmation of grant, and once a grant is



confirmed, the probate court largely becomes *functus officio*. The assignment given by the *Law of Succession Act*, Cap 160, Laws of Kenya, to the probate court, is to direct how an estate is to be shared out amongst those beneficially entitled. The *Law of Succession Act*, and the rules made under it, the Probate and Administration Rules, does not assign any role on the probate court to supervise how the estate is distributed. Implementation of the certificate of confirmation of grant is not supervised by the probate court, for there are no provisions in the *Law of Succession Act* and the Probate and Administration Rules about that.

6. The distribution, ordered at confirmation, is implemented through a process known as transmission. That process is not provided for in the *Law of Succession Act*, nor in the Probate and Administration Rules, and that is the reason why the probate court should have nothing to do with it, for the mandate of the probate court is regulated by the *Law of Succession Act* and the Probate and Administration Rules. Transmission is a process in land registration, and it is provided for and regulated by land legislation, to wit, the *Land Act*, Cap 280, Laws of Kenya, and the *Land Registration Act*, Cap 300, Laws of Kenya. I reiterate that after a grant is confirmed, the probate court is largely *functus officio*, for it has no role in transmission, for the same has not been spelt out in the legislation that it operationalises, the *Law of Succession Act*. The transmission process is overseen by the court or courts contemplated under the *Land Act* and the *Land Registration Act*.
7. According to the *Land Act* and the *Land Registration Act*, upon a grant being confirmed, the administrator should submit the certificate of confirmation of grant to the land registrar, for the purposes of transmission. It is the land registrar who is responsible for transmission, not the probate court. The land registrar has powers to settle disputes on that process, and whoever may not agree with him or her ought to move to the courts envisaged by the *Land Act* and the *Land Registration Act*, which are the Environment and Land Court or the enabled subordinate courts. As it is, the applicant is dragging me into a matter that is outside the scope of my mandate as a probate court. The parties should place this matter before the land registrar, or the Environment and Land Court or the enabled subordinate court.
8. The *Land Act* deals with transmission of estates under sections 49 to 54. For the purposes of these proceedings, the relevant provision is in section 50, which provides as follows:

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“50. Transmission on death of a sole proprietor or proprietor in common

(1) If a sole proprietor or a proprietor in common dies, the proprietor’s personal representative shall, on application to the Registrar in the prescribed form and on production to the Registrar of the grant, be entitled to be registered by transmission as proprietor in the place of the deceased with the addition after the representative’s name of the words “as executor of the will of (.....) [deceased]” or “as administrator of the estate of (.....)[deceased]”, as the case may be.

(2) Upon production of a grant, the Registrar may, without requiring the personal representative to be registered, register by transmission—

(a) any transfer by the personal representative; and

(b) any surrender of a lease or discharge of a charge by the personal representative.

(3) In this section, “grant” means the grant of probate of the will, the grant of letters of administration of the estate or the grant of summary administration



of the estate in favour of or issued by the Public Trustee, as the case may be, of the deceased proprietor.”

9. That provision should be read together with section 61 of the *Land Registration Act*, which provides:

“ 61. Transmission on death of a sole proprietor or proprietor in common

(1) If a sole proprietor or a proprietor in common dies, the proprietor’s personal representative shall, on application to the Registrar in the prescribed form and on the production to the Registrar of the grant, be entitled to be registered by transmission as proprietor in the place of the deceased with the addition after the representative’s name of the words “as executor of the will of [deceased]” or “as administrator of the estate of [deceased]”, as the case may be.

(2) Upon confirmation of a grant, and on production of the grant the Registrar may, without requiring the personal representative to be registered, register by transmission—

(a) any transfer by the personal representative; and

(b) any surrender of a lease or discharge of a charge by the personal representative.

(3) In this section, “grant” means the grant of probate of the will, the grant of letters of administration of the estate or the grant of summary administration of the estate in favour of or issued by the Public Trustee, as the case may be, of the deceased proprietor.”.

10. In general terms, the 2 provisions are in similar language. However, section 50(2) of the *Land Act* is not in the exact same terms as section 61(2) of the *Land Registration Act*. The provision in section 61(2) of the *Land Registration Act* refers to confirmation of grant, while that in section 50(2) of the *Land Act* does not. Transmission of estates is a registration process, and, therefore, the primary legislation, on it, should be section 61(2) of the *Land Registration Act*. Section 61(2) of the *Land Registration Act* talks about what an administrator should do with a certificate of confirmation of grant, and what the land registrar should do with it upon receiving it.

11. The probate court confirmed the grant in 2014. The resultant certificate of confirmation of grant was presented to the land registrar, who transmitted the estate in terms of that certificate, hence the subdivision of South Teso/Angoromo/5X1, into South Teso/Angoromo/1XX12 to 1XX19. The applicant has had the 2014 certificate of confirmation of grant amended in 2019, and he has now come before me to reverse the transmission. I have no mandate to reverse that transmission in the circumstances. The probate court became functus officio once it confirmed the grant. I reiterate that the probate court can only act on procedural applications, such as review of confirmation orders or amendment of certificates of confirmation of grant, and nothing more.

12. What the applicant should have done, upon obtaining the certificate of confirmation of grant of 2019, is to present it to the land registrar for implementation, in accordance with section 61(2) of the *Land Registration Act*. I believe the land registrar could have power, under the legislation from which he draws authority, to cancel registrations. However, if he does not have such power, and the matter has to be escalated to court, then that court would not be the probate court, but the courts contemplated in the relevant land legislation, which provides for transmission of estates. I reiterate, transmission is a process in land registration, and it is not provided for under the *Law of Succession Act* and the



Probate and Administration Rules, and the probate court should not purport to venture into any matters around it, as it has not been granted jurisdiction to. The mandate over transmission lies with the courts mandated under the *Land Act* and the *Land Registration Act*.

13. As transmission is a process governed by land legislation, any disputes or actions or proceedings, relating to that process, should be subject to section 101 of the *Land Registration Act* and section 150 of the *Land Act*, as read with sections 2 of the *Land Registration Act* and the *Land Act*, both of which identify the Environment and Land Court as the “court” for the purposes of both statutes, together with any empowered subordinate court.
14. Section 2 of the *Land Act* states that ““Court” means the Environment and Land Court established under the *Environment and Land Court Act* (Cap. 8D)”; while section 2 of the *Land Registration Act* provides that ““Court” means the Environment and Land Court established by the *Environment and Land Court Act* (Cap. 8D), and other courts having jurisdiction on matters relating to land.”
15. Section 101 of the *Land Registration Act* says:

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“101. Jurisdiction of court

The Environment and Land Court established by the *Environment and Land Court Act* (Cap. 8D) and subordinate courts has jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.”

16. The *Land Act*, at section 150, provides:

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“150. Jurisdiction of the Environment and Land Court

The Environment and Land Court established in the *Environment and Land Court Act* (Cap. 8D) and the subordinate courts as empowered by any written law shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.”

17. The applicant is engaging this probate court in matters that it has no mandate over. The applicant should have presented the certificate of confirmation of grant of 2019 to the land registrar, for implementation, in terms of section 61(2) of the *Land Registration Act*, as indicated above. Any issues with that transmission process, which arise, and which the land registrar is unable to resolve, for whatever reason, should then be escalated to the Environment and Land Court, or the enabled subordinate courts, in terms of sections 2 and 150 of the *Land Act* and sections 2 and 101 of the *Land Registration Act*. I reiterate that the probate court can only exercise jurisdiction over review of the confirmation orders, but not the implementation of those orders. It is not for the probate court to guide on that implementation, or to facilitate it in the manner proposed by the applicant, that mandate lies with the Environment and Land Court, or the enabled subordinate courts.
18. I believe that I have said enough, to demonstrate that the application, dated 22nd November 2024, is in the wrong forum. I cannot grant the orders it seeks, and I hereby dismiss it. Orders accordingly.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 25TH DAY OF APRIL 2025.

W MUSYOKA



JUDGE

