



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Ernest Letuya Ole Mpaayei (Deceased) (Succession Cause  
1836 of 2005) [2024] KEHC 561 (KLR) (Family) (24 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 561 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 1836 OF 2005  
SN RIECHI, J  
JANUARY 24, 2024**

**BETWEEN**

**REBECCA RAYON MPAAYEI ..... APPLICANT**

**AND**

**PERIS MASHIPEI MPAAYEI ..... RESPONDENT**

**RULING**

1. This is Summons dated 5.11.2015 by Rebecca Rayon Mpaayei against the Respondent Peris Mashipei Mpaayei seeking several orders but the main one is
  1. That this Honourable court be pleased to order the Respondent to distribute the estate properties known as Kajiado/Kitengela/26729 and her portion of Kajiado/Olchoro-Onyore/16817 together with any or all resultant subdivisions thereof under her power of appointment provided under the law.
  2. That this Honourable Court be pleased to grant any further orders that it may deem fit and just to grant in the circumstances.
2. The grounds for the application are that the Respondent Peris Mashipei Mpaayei. (PERIS) is the widow of Ernest Letuya Ole Mpaayei (deceased). The late Ernest was the father of the applicant and the Respondent is the mother. Peris was appointed by the Court to be administrator together with her co-wife Moinke Eric Ernest Impayei. The grant was confirmed on 6<sup>th</sup> December, 2006 and the administrators were each allocated properties due to their household to hold in trust for their children. Among the property which were passed by transmission to the Respondent after sub-division is Kajiado/Kitengela/26729 the applicant has received information that the Respondent has sold part of Kajiado/Kitengela/26729 to some people and transferred others to the surviving male children. The applicant now seeks orders that the Respondent do transfer the share due to applicant to her.



3. The application is supported by the affidavit of the Applicant sworn on 5.11.2015 reiterating the grounds for the application. Peris Mashipei Mpaayei filed a replying affidavit opposing the application. In her affidavit sworn on 11.12.2015, she depones that her late husband Ernes Letuya ole Mpaayei had 2 wives and it was agreed that his estate be distributed to the two widows equally for each to hold in trust of their children.

In answer to the assertions by the applicant in paragraph 14 the Respondent depones:

- a. All that parcel of land known as land Reference Number Kajiado/ Onchoro/Onyore 38 was irregularly, illegally and wrongfully sub divided by the Land Registrar Kajiado into two parcels Kajiado/ Onchoro/ Onyore 16816 and Kajiado/ Onchoro/Onyore 16817 apportioning to one Nelly Karim alleging that he was acting on the strength of a court order. This is the subject matter in Judicial Review HCCC No. 612/02 pending before High Court.
  - b. Indeed parcel No. Kajiado/Kitengela/6895 was sub-divided into two portions Kajiado/ Kitengela/ 26728 and Kajiado/ Kitengela/ 26729 for the two households in accordance with the terms of the Certificate of Confirmation of Grant marked as Exhibit 1.
  - c. There is no time these parcels have been sold nor transferred to other parties as alleged.
4. In response to the applicant's assertion that she had been discriminated for being a daughter the Respondent in paragraph 19 depones:

“That I understand the provisions of the Constitution of Kenya and in particular Article 27 (3) on non-discrimination on basis of gender and hence have never and do not intend to discriminate my daughters when dealing with the property of my late husband”.

5. On 25.5.2023 Counsel for the Parties framed the issue for determination by the Court as

“Whether Peris ought to give applicant her share of the estate that Peris is holding in trust”.

6. From the pleadings and submissions by counsel, I find that the following issues are not disputed:

1. It is not in dispute that the applicant is a daughter of the Respondent.
2. It is also not in contention that the applicant is one of the children of the Respondent with the deceased. Indeed the Respondent has named her as one of her children.
3. It is not disputed that the estate of the deceased due to house of Peris was by Confirmation of grant issued on 6<sup>th</sup> December 2006 was vested in the Respondent to hold it in trust for herself and her children including the applicant.

7. The Respondent in explaining the delay in vests distributing the property to her children has deponed that there are several Civil Cases in Court in relation to the property vested in her. These include:

1. HCC 612 of 2004
2. High Court Petition No. 562 of 2003

8. All these are suits which touch on the estate and whose outcomes will have an effect on the estate have not been determined. The Respondent has confirmed to this Court that the beneficiaries have an equal opportunity and that she will distribute the property according to the law. The Respondent in my view explained the delay in distribution to the beneficiaries including the applicant.

Upon considering this application I find no merit in the same which is hereby dismissed with costs.



DATED AT NAIROBI THIS 24TH DAY OF JANUARY 2024

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**S. N. RIECHI**

**JUDGE**

