



In re Estate of the Late Oripah Kemunto Okeri (Deceased) (Succession Cause 962 of 2012) [2024] KEHC 3351 (KLR) (Family) (21 March 2024) (Ruling)

Neutral citation: [2024] KEHC 3351 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 962 OF 2012
HK CHEMITEI, J
MARCH 21, 2024**

BETWEEN

SAMUEL GODFREY OERI OSORO APPLICANT

AND

BERNARD OMBASA 1ST RESPONDENT

NANCY KWENGE OSORO 2ND RESPONDENT

RULING

1. The Applicant's Notice of Motion dated 27th November 2019 prays for the following orders:
 - (a) That this court be pleased to review the consent order issued on 2nd October 2018.
 - (b) To set aside and or vacate the said consent order.
 - (c) That the court do issue an order to consolidate L R NO MAVOKO /TOWN BLOCK 3/64914 and MAVOKO /TOWN BLOCK 3 /64915 for purposes of sub division as per the consent order dated 2nd October 2018.
 - (d) That in the alternative the court do issue a further order to the consent order dated 2nd October 2018 to the effect that Bernard Ombasa the 1st administrator do transfer 1 acre of land from LR NO MAVOKO/TOWN BLOCK 3/64914 to the applicant/objector.
 - (e) That a further order to the consent order dated 2nd October 2018 that Nancy Kwenge Osoro and the 2nd administrator herein do transfer 1 acre of land NO MAVOKO /TOWN BLOCK 3/64915 to the objector/ applicant.
 - (f) Costs to the applicant.



2. The application is based on the sworn affidavit of the applicant sworn on even date and the annexures thereto.
3. The Respondent has opposed the application vide his replying affidavit dated 2nd March 2023.
4. The issues between the parties are not difficult to appreciate. The Respondents sought letters of administration of the deceased estate herein which were granted on 17th September 2012 and the same confirmed on 17th November 2015.
5. The Applicant filed objection proceedings which were compromised vide the consent dated 2nd October 2018. In the said consent the applicant was to get two acres out of land parcel number MAVOKO TOWN BLOCK 3/9780 and the respondents to get two and one acres respectively.
6. It appears that by the time the consent was signed the land in question had already been subdivided and new numbers issued namely 64914 and 64915. The Applicant however disputes this and his argument is that he was never consulted and goes against the consent stated above. He also disputed the manner in which the sub division was undertaken.
7. Looking at the replying affidavit by the respondent it is clear that the issue between the parties is not that the sub division was undertaken without the applicant's knowledge but he is not interested in the portion given to him. This is exemplified by the correspondence from his counsel to the respondents'.
8. I think in my view this is splitting hairs for nothing. The consent did not indicate which portion of the suit land the parties will take. On the contrary they simply specified their respective acreages and not the location. If they were interested in the locations, they should have clearly indicated.
9. I have also seen the correspondence from the Applicant's counsel dated 8th March 2022. The same clearly talks of issues not contained in the consent.
10. I do not respectfully find anything wrong with the consent. There was no fraud, coercion or any misrepresentation or at all by either of the parties. All that the applicant needs to do is to comply with the conveyancing exercise and processes so as to have the title under his name. There is therefore no sufficient evidence before this court to review the consent order.
11. The question of location is neither here nor there. The most important and germane thing is to have the two acres transferred to the Applicant.
12. In the premises the application is disallowed and the Respondents are hereby directed to transfer the two acres to the Applicant within 90 days from the date herein. The Applicant should cooperate by providing the legal instruments to the respondents so as to ensure full compliance with the above order.
13. Costs of this application shall be in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS

21ST DAY OF MARCH 2023.

H K CHEMITEI

JUDGE

SUCCESSION CAUSE NO. 962 OF 2012 RULING Page 2 of 2

