



**In re Estate of the Late Kipsang Rochi (Deceased) (Succession Cause
37 of 2000) [2024] KEHC 3115 (KLR) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3115 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 37 OF 2000**

JK SERGON, J

MARCH 19, 2024

IN THE MATTER OF THE ESTATE OF THE LATE KIPSANG ROCHI (DECEASED)

JOEL KIPKEMOI CHEPKWONY.....PROTESTOR/APPLICANT

VERSUS

EZEKIEL TOWETT ARAP SANG...1ST PETITIONER/RESPONDENT

ESTHER CHEMUTAI MARITIM...2ND PETITIONER/RESPONDENT

RULING

1. The application coming up for determination is a notice of motion dated 5th December, 2023 seeking the following orders;
 - (i) Spent
 - (ii) That the respondents be directed to execute transmission documents and any other documents required at the Lands Registry for the purposes of effecting distribution of the deceased's estate in accordance with the rectified certificate of confirmation of grant issued 31st day of July, 2023.
 - (iii) That in the alternative the Deputy Registrar of this Honourable Court be authorized to sign all necessary and requisite transmission documents necessary for transmission of all that parcel of land known as Kericho/Kipwastuiyo/399 as per rectified certificate of confirmation of grant issued on 31st day of July, 2023.
 - (iv) That the OCS Tiriitab-Moita Police Station be ordered to give security to surveyors during subdivision of the deceased's estate land namely Kericho/Kipwastuiyo/399
 - (v) That the respondents by themselves, their workers, employees, servants and/or agents be restrained from preventing the applicant from taking possession of, occupying, using or dealing with a portion of land apportioned to him during the survey exercise of subdivision of the deceased estate land title Kericho/Kipwastuiyo/399



- (vi) That the respondents be condemned with costs of this application
2. The application is supported by grounds on the face of it and the supporting affidavit of Joel Kipkemoi Chepkwony the applicant.
 3. The applicant avers that he is one of the beneficiaries of the estate of the deceased as confirmed by the certificate of confirmation of grant dated 31st July, 2023.
 4. The applicant avers that the respondents have refused to execute the requisite documents necessary for transmission of all that parcel of land known as Kericho/Kipwastuiyo/399 to enable the land registrar to effect the terms of the rectified certificate of confirmed grant.
 5. The applicant avers that the respondents have violently prevented surveyors from subdividing the deceased's estate land as per the certificate of grant, by threatening violence against the surveyor and himself.
 6. The applicant avers that the respondents had denied him occupation of his rightful portion of land and as a result he had been rendered destitute and homeless.
 7. The applicant was adamant that the actions of the respondents are patently illegal, unreasonable and/or unjustified.
 8. In response to the instant application, Ezekiel Towett Arap Sang, the 1st Petitioner/Respondent filed a replying affidavit in which he avers that the instant application is premature, frivolous, vexatious and an abuse of the court process as the estate was undergoing administration and the transmission process ongoing.
 9. The 1st Petitioner/Respondent contends that he has not refused to execute the relevant transmission documents and further that the applicant has never contacted him and the co-administrator to sign documents in respect of the transmission.
 10. The 1st Petitioner/Respondent contends that he and the co-administrator have not prevented surveyors from subdividing the land and that this allegation was a figment of the applicant's imagination as the surveyors have not visited the estate property.
 11. The 1st Petitioner/Respondent contends that he has not denied the applicant or any of the beneficiaries, occupation of the estate property.
 12. I have considered the pleadings by the parties and the issue for determination is whether to compel the respondents to execute transmission documents and any other documents required at the Lands Registry for the purposes of effecting distribution of the deceased's estate in accordance with the rectified certificate of confirmation of grant issued 31st day of July, 2023. The answer is in the affirmative, the rectified certificate of confirmation of grant was issued on 31st July, 2023, it has been over (7) seven months and there seems to be an impasse in the administration of the estate giving rise to the instant application.
 13. There is no need to bother the Deputy Registrar to sign transmission documents as it is the duty of the administrators to execute it and where reluctant, fresh administrator (s) will be appointed to complete the process. In *Paskarua Mogire Ontita v Joseph Mose Akuma* Succession Cause No. 209 of 2000 (unreported) in a similar application, the Court held that the Deputy Registrar cannot usurp the powers of an administrator and therefore the court lacked the jurisdiction to grant the orders sought. In *the Estate of Reuben Mugesani Bulimu (Deceased)* Succession Cause No. 847 of 2013 Musyoka J. observed as follows; "After a grant is confirmed, and a certificate of confirmation of grant issued, the



process that follows is known as transmission, of the property from the name of the deceased to that of the beneficiaries named in the certificate of confirmation of grant. That would involve, where the property has to be shared amongst many persons, the subdivision of the property, before the resultant subtitles are registered in the names of the beneficiaries. Transmission is not provided for under the Law of Succession Act, nor under the Probate and Administration Rules. It has nothing to do with the probate court, and it is carried out at the lands registry. It is, therefore, a process under land legislation.”

14. *In the Estate of Reuben Mugesani Bulimu (Deceased)* (supra) Justice Musyoka further observed that with respect to transmissions, the High Court has not been conferred with authority to make intervention, any intervention must be done in accordance with the governing land legislation, by the entities given that authority by the said legislation.
15. Following the foregoing, the notice of motion dated 5th December, 2023 is allowed giving rise to the following orders;
 - (i) The respondents are hereby directed to execute transmission documents and any other documents required at the Lands Registry for the purposes of effecting distribution of the deceased’s estate in accordance with the rectified certificate of confirmation of grant issued 31st day of July, 2023 within forty five (45) days. The matter to be mentioned in court to confirm compliance and further directions on 16/7/2024.
 - (ii) The respondents are condemned to pay the costs of this application.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 19TH DAY OF MARCH 2024.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

No Appearance for the Parties

