



In re Estate of David William Kigumi Kimemia (Deceased) (Succession Cause 217 of 2003) [2024] KEHC 4069 (KLR) (26 April 2024) (Ruling)

Neutral citation: [2024] KEHC 4069 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 217 OF 2003**

JRA WANANDA, J

APRIL 26, 2024

**IN THE MATTER OF THE ESTATE OF THE LATE
DAVID WILLIAM KIGUMI KIMEMIA (DECEASED)**

BETWEEN

BENSON KIMEMIA 1ST ADMINISTRATOR

SYLVIA WAMBOI 2ND ADMINISTRATOR

AND

JORAM KIMEMIA RESPONDENT

RULING

1. Before this Court for determination is a Summons for Confirmation of the Grant of Letters of Administration issued herein as well as the Protest filed in opposition to the Summons.
2. The deceased, David William Kigumi Kimemia, died intestate on 15/07/2003 at the age of 50 years. On 8/10/2003, Salome Wanjiru Kigumi Kimemia, as the widow, and the Protester, Joram Kimemia as a son of the deceased, jointly petitioned for Grant of Letters of Administration Intestate in respect to the estate. In the Petition, it was stated that the deceased had left behind the widow and 5 children, including the Protester and the current Administrators. Several assets were then listed as comprising the estate. The Grant of Letters of Administration was then on 23/06/2004 given to the widow and the Protester as joint Administrators. The Grant was subsequently confirmed on 22/05/2006 and the estate distributed amongst the survivors. Upon the then Administrators' (widow and the Protester) Application, the Grant was later rectified on 14/05/2007 to include some additional properties and which were also distributed. The amended Grant was confirmed on 18/09/2012.
3. On 27/02/2019, the current 1st Administrator, Benson Kimemia filed Summons seeking revocation or annulment of the Grant. The ground advanced was that the Grant was obtained fraudulently since the family members alleged to have signed consents to the Petition for Letters of Administrators,



confirmation thereof and the subsequent rectification thereof, never signed such consents and that the same were therefore forgeries.

4. However, before the above Summons could be heard, on 2/05/2019, one Abraham Kipkosgei Chelanga filed an Application seeking leave to join these proceedings as an Interested Party claiming that after confirmation of the Grant and distribution of the estate, he purchased from the Protester (then a co-Administrator), the property Eldoret Municipality Block (West Framers)/1020 measuring 0.100 Ha and also Pioneer Ngeria Block 19 (EATEC)/1114 measuring 1 acre. By the Ruling delivered by Hon. Lady Justice H. Omondi (as she then was), the Application was allowed and the said Abraham Kipkosgei Chelanga allowed to participate in these proceedings as an Interested Party.
5. With the Application by the Interested Party determined, the Summons for Revocation was then heard. By the Judgment delivered by Hon. Lady Justice H. Omondi (as she then was), on 27/05/2021, the Summons was allowed and the Grant and confirmation thereof revoked/annulled.
6. With the Grant revoked, the estate remained without an Administrator. In the circumstances, on 1/10/2021, the current Administrators, Benson Kimemia and Sylvia Wamboi applied to be appointed the new Administrators. By the orders given on 10/03/2022 by Hon. Lady Justice H. Omondi (as she then was), the Application was allowed and the Administrators, Benson Kimemia and Sylvia Wamboi appointed the new joint Administrators.
7. Before the Court now is the current Administrators' Summons dated 26/05/2022 seeking Confirmation of the Grant of Letters of Administration and by extension, distribution of the estate. The Summons is filed through Messrs Maurice Oduor & Co. and is expressed to be brought under Section 71 and of the Law of Succession Act and Rules 40 and 73 of the Probate and Administration Rules. It is then premised on the grounds appearing on the face thereof and is supported by the Affidavit sworn jointly by the two co-Administrators, Benson Mwenda Kimemia and Sylvia Wambui Kimemia.

Affidavit of Protest

8. The Protester, Joram Kimemia, opposed the mode of distribution proposed in the Summons for Confirmation and in so doing, swore the Affidavit of Protest filed on 5/07/2023 through Messrs Reece Mwani & Co. Advocates. In the Affidavit, the Protester deponed that he is the first born of the deceased and therefore a dependent under the provisions of Section 29 of the Law of Succession Act, that the property known as Eldoret Municipality/Block 15 (Huruma)/130 measuring approximately 0.0933 Ha does not form part of the estate as the same belongs to him exclusively, that he owned and developed the same before the demise of the deceased as confirmed by the copies of the title deed and green card exhibited, that the deceased left other properties but the said Eldoret Municipality/Block 15 (Huruma)/130 has been wrongly included as part of the assets of the deceased hence the same should be removed from the list.
9. He deponed further that on 9/05/2023 he was shocked to learn from his Counsel that he (Protester) had allegedly signed a consent in the presence of Henry Kenei, Advocate and Commissioner for Oaths, that he has never signed the alleged consent and he has never appeared before the said Advocate, that on the same date the Court directed the Administrators to supply the Protester's Advocate with the original signed consent to the mode of distribution but to date the same has not been done hence he can only read mischief and bad faith, that what has been proposed as per the consent to the mode of distribution is a sham full of falsehood and forgery and ought to be rejected, that on 26/05/2022 he was in Eldoret hence it is not possible for him to have appeared before the Commissioner for Oaths in Eldoret, that the deceased was survived by the 6 dependents listed above, that there has been a well-



orchestrated scheme by the Petitioners and their mother, Salome Wanjiru Kigumi to disinherit the Protester.

10. The Protester stated further that the Petition for Letters of Administration Intestate was filed on 8/10/2003 by Messrs Andambi & Co. Advocates, that the Grant of Letters of Administration was issued to their mother and the Protester on 23/06/2003, that the rest of the survivors consented to the making of the Grant (Form 38), that all the beneficiaries signed consent dated 24/11/2005 on mode of distribution, that pursuant thereto, the Court confirmed the Grant and issued a Certificate to that effect, that the Certificate was rectified on 14/05/2007, that all these processes were done by the said Messrs Andambi & Co. Advocates, that the Grant having been confirmed and most of the estate having been distributed to all the beneficiaries, most of the beneficiaries developed, improved, utilized and some have disposed of their entitlement which factors the Court should put into consideration when redistributing the estate, that the beneficiaries being unable to agree and considering that the earlier confirmed and rectified Grant was revoked after the Protester sold the property known as Eldoret Municipality Block 15 (West Framers)/1020 (0.100 Ha) and one acre of Pioneer/Ngeria Block 19(EATEC) which had been given to him in the confirmed Grant, to one Abraham Kipkosgei Chelanga (the Interested Party), he proposes that the land known as Pioneer/Ngeria Block 19(EATEC) be shared equally amongst the 5 children and one acre out of what should have been the Protester's share be given to the Interested Party as he was an innocent purchaser for value, that Highrise Designers Limited is not a beneficiary and/or liability to the estate hence cannot be given the property known as Pioneer/Ngeria Block 1 (EATEC)/1114.
11. He also deponed that he (Protester) is the eldest son of the deceased and over 40 years hence his younger siblings cannot hold property in trust for him, that in fact his eldest son is 19 years old and had applied to be joined in this Cause, that as can be seen, Benson Mwenda Kimemia has allocated himself the whole of the shares at Mboi-Kamiti Company while purporting to hold the rest of the properties in trust for the family, that this is selfishness which this Court should reject, that the shares at Mboi-Kamiti Company should be shared equally amongst all the children of the deceased, that Eldoret Municipality Block 15 (West Framers)/1020 (0.100 Ha) should be given to the said Abraham Kipkosgei Chelanga since he (Protester) had sold the same to the latter after confirmation of the Grant, that the property should be subtracted from the Protester's share of the estate, that this will resolve the dispute in Eldoret Environment and Land Court Case No. E33 of 2022 between the Interested Party and the Administrators herein, that indeed this Court in its Ruling delivered on 4/05/2020 while joining the Interested Party into this Cause observed that no party will be prejudiced if the Interested Party is so joined, that it is still the position that no party will be prejudiced if the Interested Party who innocently purchased the property from the Protester after the Grant had been confirmed and before its revocation is given the property which will be removed from the Protester's share, and that the shares in the various companies should be shared equally amongst the dependents (spouse and 5 children).

Administrator's Replying Affidavit

12. In response to the Affidavit of Protest, the 1st Administrator/Petitioner, Benson Kimemia, swore the Affidavit filed on 5/12/2023. He deponed that the Protester's allegation that the property known as Eldoret Municipality/Block 15(Huruma)/130 does not form part of the estate is not true as the shares in respect to the said property was owned by the deceased and whereas the Protester obtained a title to the property, this happened in the year 2008 whereas the deceased died in the year 2003 leaving behind the said shares, that it is not true that the property was wrongfully included in this Succession Cause, that the Protester is invited to produce a copy of the share certificate for the property, that the property reverted back to the estate by dint of the Judgment delivered on 27/05/2021 (revocation of the Grant),



that in fact the Land Registrar is in the process of effecting the order as the same devolved from the impugned Grant.

13. The 1st Administrator deponed further that the Protester was previously a joint Administrator and the Court established glaring fraud and annulled/revoked the Grant and therefore he should not be allowed to indirectly re-administer the estate by filing the present frivolous objection, that the Protester took part in giving the consent but has now reverted to frustrating these Succession proceedings as a way of revenge because of the revocation of the previous Grant, that the Protester is resorting to canvassing the previous Grant whereas Administrators were appointed to administer the estate, that the Administrators should be allowed to do so in the best interest of all the beneficiaries, that the said parcel having been sold using a document that emanated from a now revoked Grant, it cannot pass the test, that the Judgment delivered on 27/05/2021 meant that any property that devolved from the proceedings giving rise to the impugned Grant immediately reverted to the estate.

Hearing of the Summons

14. It was then agreed, and I directed, that the Summons and the Protest be determined together, and be canvassed by way of written Submissions. Pursuant thereto, the Administrators filed their Submissions on 23/02/2024. As regards the Protester, up to the time when I concluded this Ruling, I had not come across any Submissions filed by or on his behalf

Administrators' Submissions

15. Counsel for the Administrators submitted that the Protest is based on an attempt to defeat the essence of fair administration, that the Administrators have, in the Summons for Confirmation, considered every beneficiary including the Protester by seeking to hold the estate in trust for the family, that the Protester who was then an Administrator filed Summons for Rectification dated 21/09/2006 and swore an Affidavit to include among other properties, the shares comprising Huruma Farmers Company Limited - share certificate number 337 in the name of the deceased which would later be the parcel number Eldoret Municipality/Block 15(Huruma)/130, that how the Protester ended up transferring the said parcel of land without having it first registered in the name of the deceased before being transmitted to him vide rectification of Grant is *res ipsa loquitur* to reasons for which the earlier Grant was revoked/annulled.
16. Counsel cited Rule 41(3) of the *Probate and Administration Rules* and also the case of *Priscila Ndubi and Zipporah Mutiga v Gerishon Gatobu Mbui*, Meru Succession Cause No. 720 of 2013 and submitted that the said parcel of land belongs to the estate going by the Protester's own Affidavit in support of the Summons for Rectification of the Grant sworn way back on 21/09/2006, that the motivation for the Protester is not in the interest of fair administration of the estate but to indemnify a 3rd party who is an alleged buyer of the said parcel of land and which was obtained as a result of the revoked Grant, that by dint of paragraph 43 of the Judgment by Lady Justice Omondi on 27/05/2021, at the point of revocation, all the properties reverted back to the estate, that any claims or interests that the Interested Party may claim to have acquired on the property cannot be sought against the estate but against the seller, that paragraph 7 of the Sale Agreement dated 8/01/2019 and paragraph 6 of the Sale Agreement dated 18/01/2019 provide for the manner in which the parties to the Agreements proposed to settle disputes arising from a refusal by family members of the deceased to consent to the transaction, that there is therefore an express remedy for the Interested Party and he will not be at any disadvantage nor will he suffer any irreparable damage as observed at page 43 of the said Judgment.



Determination

17. It is evident that the issue for determination herein is
- “whether this Court should distribute the estate herein in terms of the mode of distribution proposed in the Administrators’ Summons for Confirmation and/or whether the challenges pointed out by the Protester should be considered or upheld”.
18. The Administrators, in their Summons for Confirmation presented to the Court, have attached a Consent bearing the signatures of all the 6 survivors/beneficiaries, including their mother and also the Protester. The first item that therefore arises in this matter is the statement by the Protester that he was shocked to learn from his Counsel that he (Protester) had allegedly signed the said consent and in the presence of Henry Kenei, Advocate and Commissioner for Oaths, thus signifying his agreement with the mode of distribution submitted by the Administrators.
19. The Protester is emphatic that he has never signed the alleged consent and he has never appeared before the said Advocate. My observation is that these denials have not been seriously challenged by the Administrators since they have not made any attempts to rebut the Protester’s denials. The Protester has also correctly observed that on 9/05/2023, the Court directed the Administrators to supply the Protester’s Advocates with the original signed consent for his scrutiny. Indeed, I directed that such service be effected within 7 days. According to the Protester, to date that direction has not been complied with and by reason whereof, he can only read mischief and bad faith on the part of the Administrators. According to him, the act of non-compliance is proof that the signature on the consent purported to be his is a forgery. Again, the Administrators have not made any attempts to rebut these very serious accusations. In the circumstances, I am inclined, on a balance of probabilities, to believe the Protester and hold that he never signed the consent.
20. Another relevant point is the claim by the said Abraham Kipkosgei Chelanga who successfully filed an Application seeking leave to join these proceedings as an Interested Party. The basis of his claim is that he purchased from the Protester (then a co-Administrator), the property known as Eldoret Municipality Block (West Framers)/1020 measuring 0.100 Ha and also a 1-acre portion of the property known as Pioneer Ngeria Block 19 (EATEC)/1114. On his part, the Protester confirmed that indeed the said properties should be given to the said Abraham Kipkosgei Chelanga (Interested Party) since he (Protester) had sold the same to the Interested Party after confirmation of the earlier Grant before it was revoked. According to the Protester, the property should be subtracted from the Protester’s share of the estate. Although no copies of pleadings have been supplied, the Protester confirmed the claims made by the Interested Party and also confirmed that the matter is the subject of the litigation in Eldoret Environment and Land Court Case No. E33 of 2022 in which the Interested Party has sued the current Administrators herein seeking to be declared the owner of the properties.
21. Another issue arising is the Protester’s allegation that the property known as Eldoret Municipality/Block 15 (Huruma)/130 measuring approximately 0.0933 Ha belongs to him exclusively and that it does not therefore form part of the estate herein. He claims that he owned and developed the property long before the demise of the deceased as confirmed by the copies of the title deed and the green card that he exhibited. According to him therefore, the property has been wrongly included as part of or in the list of the assets of the deceased and that the same should therefore be removed therefrom. In response and in denying the Protester’s claims, the Administrators aver that the property Eldoret Municipality/Block 15(Huruma)/130 indeed forms part of the estate as the company shares in respect to the property were at all material times owned by the deceased. The Administrators contend further that while the Protester secured registration of the property into his name, such registration was only



made in the year 2008 whereas the deceased died much earlier in the year 2003 leaving behind the said company shares in his name. The Administrators have challenged the Protester to produce a copy of the company share certificate relating to the property. On my part, I observe that the Protester has not at all addressed these issues raised by the Administrators.

22. Further, and more important, the Administrators have correctly pointed out that that the Protester, who was still then a co-Administrator, filed the Summons for Rectification herein dated 21/09/2006 and swore an Affidavit asking the Court to include, among other properties, the same one comprising the shares held by the deceased in Huruma Farmers Company Limited, namely, Share Certificate number 337. The Protester has not denied that indeed it is the same parcel of land comprised in the said Share Certificate number 337 that was later assigned the description of the parcel number Eldoret Municipality/Block 15(Huruma)/130. In the absence of any explanation or any supporting documentation forthcoming from the Protester, I share the Administrator's concern regarding how, in what manner and at what point in time, ownership of the property was re-assigned from the name of the deceased into the name of the Protester. Since on 21/09/2006, the Protester swore an Affidavit expressly and unconditionally confirming that the property was part of the estate, what has now changed to advance a contrary view?
23. In the circumstances, and although the property is now registered in the name of the Protester, I find it fair and just, to treat it, for purposes of distribution of the estate, as being one of the properties comprising the estate of the deceased.
24. There is also the proposal by the Administrators to allocate to the entity known as Highrise Designers Limited, the whole 5 acres of the property known as Pioneer/Ngeria Block 1 (EATEC)/1114. The Protester has challenged this proposed allocation claiming that the said Highrise Designers Limited is not a beneficiary and/or a liability to the estate and cannot therefore be given the property. I note that no explanation whatsoever has been offered by the Administrators to give an insight on who the said Highrise Designers Limited is and the basis upon which the property is proposed to be allocated to it. The scenario becomes even more complicated when it is considered that it is the same property, Pioneer/Ngeria Block 1 (EATEC)/1114, that the Interested Party claims to have purchased 1-acre portion therefrom, from the Protester and which allegation the Protester confirms.
25. The Protester has also challenged the Administrators' proposal, as a mode of distributing the estate, to hold some of the properties in trust for the family. The Protester has deponed that he is the eldest son of the deceased and is over 40 years old and wonders why and how his younger siblings want to hold property in trust for him. I, too, am at a loss on this choice of mode of distribution adopted by the Administrators. The essence of confirmation of a Grant is to fully distribute an estate amongst the beneficiaries and thus bring a Succession Cause to a closure. Unless where the law stipulates, such as where the beneficiaries or some of them, suffer from some kind of incapacity such as being below the majority age (minors) or suffering from mental incapacity, unless the beneficiaries agree by consent, I find no reason why Administrators would insist on holding property in trust for a sane and adult beneficiary against his will. The Administrators have not disclosed the properties are to be held in trust pending what event and for how long. Allowing the Administrators to hold the properties in trust, particularly indefinitely, will mean that the distribution to be made herein will be inconclusive. That would be a clear recipe for eruption of disputes in future and which means that the beneficiaries shall perpetually be before this Court for litigation. I therefore decline that proposal by the Administrators to hold the properties in trust.

Final Orders

26. In light of the foregoing, I make the following orders:



- i. The determination of the Summons for Confirmation of Grant dated 26/5/2022 is hereby deferred to enable the Administrators file a fresh proposed mode of distribution. Such fresh mode of distribution shall be guided by the following directions:
 - a. The Administrators shall obtain Valuation Reports giving the values of the respective properties/assets listed in the Affidavit filed in support of the said Summons for Confirmation. The Administrators shall then use or rely on the Valuation Reports to prepare and submit a proposed mode of distribution that is based on equality and/or equity in distribution of properties/assets amongst the beneficiaries. Such Valuation Reports and the fresh proposed mode of distribution shall be filed in Court and served upon the Protester within a period of sixty (60) days.
 - b. Since the beneficiaries are all adults, and to avoid further protracted litigation or further disputes, no property/asset shall be held in trust by the Administrators for any beneficiary or the family and all the properties/assets shall therefore be fully, conclusively and finally put forward for distribution.
 - c. The property known as parcel number Eldoret Municipality/Block 15(Huruma)/130, which, it is not disputed, emanated from the Share Certificate number 337 held by the deceased in Huruma Farmers Company Limited, although currently registered in the name of the Protester, Joram Kimemia, is hereby declared, for the purposes of the distribution of the estate herein, to be amongst the properties comprising the estate. Since, however, the property is currently registered in the name of the Protester, the Administrators shall consider, if equal or equitable distribution can still be achieved, to treat the property as comprising the Protester's share of the estate and subtract or factor it in determining the net share due to the Protester in distribution of the estate amongst the beneficiaries.
 - d. In the event that the value of the said property is more than the Protester's entitlement to the estate, then the Administrators shall be at liberty, at their option, to demand or claim for indemnification or payment or compensation to the estate, by the Protester, of the value over and/or above such entitlement.
 - e. The properties known as Eldoret Municipality/Block 15(Huruma)/130) and Pioneer/Ngeria (EATEC) 1114 which are stated to be the subject of litigation in Eldoret Environment and Land Court Case No. E33 of 2022 involving the Interested Party, Abraham Kipkosgei Chelanga, are similarly hereby declared to be amongst the properties comprising the estate of the deceased. Since, however, the entire parcel number Eldoret Municipality/Block 15(Huruma)/130) and the 1-acre portion of parcel number Pioneer/Ngeria (EATEC) 1114 are stated to have been sold by the Protester to the Interested Party, distribution of the parcel number Municipality/Block 15(Huruma)/130) and of the 1-acre portion of parcel number Pioneer/Ngeria (EATEC) 1114 shall be deferred and not undertaken at this stage, and shall be excluded for distribution for now, and/or in the interim, pending determination of the said Eldoret Environment and Land Court Case No. E33 of 2022.
 - f. For avoidance of doubt therefore, the distribution of the estate to be undertaken at this stage shall only be partial as described above, pending determination of the said Eldoret Environment and Land Court Case No. E33 of 2022.



- g. Regarding the entity described as Highrise Designers Limited to whom the Administrators have proposed to allocate the whole 5 acres of the said property, Pioneer/Ngeria Block 1 (EATEC)/1114, although distribution thereof shall, as aforesaid, await determination of the said Eldoret Environment and Land Court Case No. E33 of 2022, the Administrators shall in the meantime, while filing the fresh proposed mode of distribution in Court, also give an explanation on the basis, together with supporting documents, under which the same is proposed to be allocated to the said Highrise Designers Limited.
- ii. Costs of the Valuation referred to above and/or any other expense arising from or incurred in connection thereto shall be paid from the estate.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 26TH DAY OF APRIL 2024.

.....

WANANDA J.R. ANURO

JUDGE

