



**In re Estate of John Joseph Kamotho (Deceased) (Succession Cause
1096 of 2017) [2022] KEHC 3278 (KLR) (18 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 3278 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
SUCCESSION CAUSE 1096 OF 2017**

AO MUCHELULE, J

JULY 18, 2022

IN THE MATTER OF THE ESTATE OF JOHN JOSEPH KAMOTHO DECEASED

BETWEEN

EUNICE WAMBUI KAMOTHO 1ST APPLICANT

CHARLES GITHII KAMOTHO 2ND APPLICANT

AND

MARIANNE NYOKABI KAMOTHO 1ST RESPONDENT

DAVID WAWERU KAMOTHO 2ND RESPONDENT

RULING

1. The deceased John Joseph Kamotho died intestate on December 6, 2014 in a hospital in South Africa. He left his widow Eunice Wambui Kamotho (the 1st applicant) and three children: Charles Githii Kamotho (2nd applicant), James Mwai Kamotho, Marianne Nyokabi Kamotho (1st respondent) and David Waweru Kamotho (2nd respondent).
2. The administrators of the estate of the deceased are the applicants and the 1st respondent. The grant was issued on June 22, 2021 and the application for its confirmation shall be heard on July 18, 2022.
3. One of the properties in the estate of the deceased is Town House No. 7, Jadenville Country Homes, L.R. No. 17/419. The deceased and the 1st applicant are the registered owners of the property as tenants in common in equal shares. In the instant application dated April 19, 2022, the 1st applicant is seeking leave to sell the property before the confirmation of the summons to raise money to cater for her medical expenses, to pay her workers, to pay for her upkeep, to settle security and utility bills and to buy a specialized vehicle costing about Kshs.2,680,000/=. She needs the vehicle because she is sickly and confined to a wheelchair, and for the last 10 years she has not been working. She states that if the application is allowed, she will be entitled to half of the proceeds which she will use to cater for the



- above expenses and bills and the other half will go to the four children. She cannot sell half the property because it is a house.
4. It is clear from replying affidavit by the respondents, who has opposed the application, that even before making the application the 1st applicant had on March 17, 2022 entered into an agreement to sell the property to Erick Murunga and Joy Kobia for Kshs.82,000,000/=, received a deposit of Kshs.8,200,000/=, leaving a balance of Kshs.73,800,000/=. The respondents state that they are opposed to this piecemeal distribution of the estate, and want the parties to wait for the confirmation of the grant when the entire estate shall be distributed. Their case is that although the 1st applicant, their mother, is sick and on a wheelchair for a long period, she has a comprehensive medical cover and that therefore no medical bills would be outstanding. As for the vehicle, they stated that the 1st applicant, although handicapped, does not need it. As for the said bills, their assertion was that the 1st applicant receives substantial rent, she is on pension from the Government of Kenya (the deceased having been a cabinet minister), and therefore she is sufficiently financially catered. They stated that the alleged sale has been reported to the CID and is being investigated. According to them, this is part of the intermeddling that the 1st applicant is involved in. Through the replying affidavit they are seeking that the 1st applicant accounts to the beneficiaries. Lastly, they stated that all the deceased's children are busy pursuing their professional careers.
 5. Under section 83 (b) (ii) of the *Law of Succession Act*, (cap. 160) it is illegal for an administrator to sell an immovable property belonging to the deceased before the grant is confirmed. Here, the 1st applicant begun to sell the property in question before the grant was confirmed. She did not seek the court's authority before engaging in the transaction. She has come to court after she has begun to transact.
 6. Be it as it may, I consider that the 1st applicant was married to the deceased for many years. This can be evidenced by the fact that the children were between 48 and 37 years of age when the case was filed in 2017. The 1st applicant was then 71 years old. She is now about 76. She is sickly and on a wheelchair. In all of the property left by the deceased, including the house, there is certainly an element of her contribution to their acquisition and development. The couple educated their children who are now pursuing professional careers. They will certainly each benefit from the estate when the grant is finally confirmed.
 7. I also considered that this apparently straightforward case has remained unresolved since 2017, largely because of lack of understanding between the 1st applicant and the respondents. There is no telling whether, come the day of hearing of the application for confirmation, there won't be a twist of some kind. It is quite unfortunate that the 1st applicant who was once normal but is now confined to a wheelchair says that she needs to buy a specialized vehicle to ferry her around, but the respondents say that, according to them, that is not necessary. That must be very painful for the 1st applicant.
 8. Considering the special circumstances for this case, and given the powers donated to this court under section 47 of the Act and Rule 73 of the *Probate and Administration Rules*, I allow the sale and order that half of the proceeds of the sale shall be shared equally among the children of the deceased while the other half shall absolutely go to the 1st applicant. These provisions shall be taken into account when distributing the rest of the estate of the deceased.
 9. Costs shall be in the cause.

DATED and DELIVERED at NAIROBI this 18TH day of JULY 2022

A.O. MUCHELULE

JUDGE

