



REPUBLIC OF KENYA



In re Estate of Heldon Ihachi Isiaho (Deceased) (Succession Cause 510 of 2010) [2023] KEHC 26147 (KLR) (30 November 2023) (Ruling)

Neutral citation: [2023] KEHC 26147 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 510 OF 2010
SC CHIRCHIR, J
NOVEMBER 30, 2023**

RULING

1. The 1st petitioner's summons dated 12.9.2022 seeks for the following prayers
 - a. That this court be pleased to order and direct that the sub-division of land Parcel Registration numbered Kakamega/Shilakala/1169 be undertaken by a Government Surveyor and that the survey be undertaken as per the certificate of confirmation of the grant dated 22.1.2021
 - b. That this court be pleased to order the OCS Malaika police station to provide security to the applicant, other beneficiaries and the surveyor to implement the survey and distribution of the estate of the deceased comprising the above parcel
 - c. That this Honourable court be pleased to direct the Deputy Registrar of this court to sign all documents necessary to distribute the estate of the deceased herein on the part of the beneficiaries who are uncooperative and have refused to sign
 - d. That costs of this application be provided for:-
2. The application has been brought on grounds that the 2nd petitioner and some of the beneficiaries have been uncooperating that 2nd petitioner has shown violent tendencies towards the Applicant every time, attempts are made to sub-divide the land.
3. The 2nd petitioner and a beneficiary, one Geoffrey Mutanyi Kanila filed their responses. They have stated that they take no issue with the sub-division of the land. However, they reject a portion of the land being given to one Tom Ihachi

Determination

4. The orders being sought by the applicant is essentially to give effect to the distribution of the estate as done by the court on 22nd day of January, 2021 and as further expressed by certificate of confirmation of grant issued the same day.
5. Thus the application is facilitative in nature, and this court has no reason to deny the prayers



6. I have taken note of the objection by the 2nd petitioner and the beneficiary. In their objection, they are simply resisting the court orders made on 22nd January 2021.
7. The said orders have neither been reviewed or appealed against. There are therefore valid court orders in place which must be complied. The respondent do not have the luxury of choosing which orders they will comply with and which ones they will not.
8. If the respondent were dissatisfied with the said orders, they had the liberty to go on an appeal. They did not, and what is now remaining is the implementation of those orders. The respondent's opposition is without any merit.
9. The summons dated 12th September 2022 is merited and the same is hereby allowed in terms of prayer 1, 2, and 3. Each party to meet their own costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 30TH DAY OF NOVEMBER 2023

S. CHIRCHIR

JUDGE

