



**In re Estate of Hosea Sakwa Silunya (Deceased) (Succession Cause 4 of 2007)
[2024] KEHC 16174 (KLR) (Family) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16174 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 4 OF 2007
EKO OGOLA, J
DECEMBER 20, 2024**

IN THE MATTER OF THE ESTATE OF HOSEA SAKWA SILUNYA (DECEASED)

BETWEEN

**CHARLES TEMBA SAKWA 1ST ADMINISTRATOR
FRANCIS AMULIOTO SAKWA 2ND ADMINISTRATOR
RUTH AMIMO 3RD ADMINISTRATOR
ANNE KABEKA SAKWA 4TH ADMINISTRATOR**

AND

**D.B WATI & COMPANY ADVOCATES 1ST RESPONDENT
S.J NYANG & COMPANY ADVOCATES 2ND RESPONDENT
S.K AMANI & ASSOCIATES ADVOCATES 3RD RESPONDENT**

RULING

1. The application before the court is dated 27th June 2023. The applicant prays for the following orders:
 - a. Spent;
 - b. That leave be granted to the firm of Kusow & Company Advocates to act for the 1st-4th administrators in place of D.B Wati & Co. Advocates, S. J Nyang & Co. Advocates and S.K Amani & Associates Advocates.
 - c. That the Order dated 30th April 2020 be varied in terms of Order 6 and the parties Advocates be replaced with Kusow & Company Advocates in place of D.B Wati & Co. Advocates, S. J Nyang & Co. Advocates and S.K Amani & Associates Advocates.



- d. That Order 7 of the Orders dated 30th April be varied in view of prayer (b) above and the firm of D.B Wati & Co. Advocates, S. J Nyang & Co. Advocates and S.K Amani & Associates Advocates be ordered to forthwith forward all proceeds from the sale of the estate properties described in the grounds and the original titles and documents of the said properties in their custody to the firm of Kusow & Co. Advocates.
 - e. That this honorable court be pleased to grant any further orders it deems fit and just.
 - f. That costs of this Application be provided for.
2. The application is based on the grounds set out therein and the applicant's supporting affidavit.
 3. The Order of this court dated 30th April 2020 stated that the administrators' advocate on record D.B Wati & Co. Advocates, S. J Nyang & Co. Advocates and S.K Amani & Associates Advocates were to oversee and supervise the sale of properties in the estate. Proceeds from the sale and all documents thereto were to be held by the advocates in a joint interest-earning account pending the determination of this petition.
 4. The applicant deposed that some properties were disposed of, and the proceeds totaled Kshs.46,300,000. The said proceeds are held by the advocates as ordered by the court.
 5. According to the applicant, LR No. 36/1/878 Eastleigh Section 1 Nairobi was sold by the firm of S.J. Nyang' & Co. Advocates without the administrators' instructions and the deposit was paid to the firm's account. Further to this, she contended that it is unclear how the said firm accessed the administrators' signatures.
 6. The applicant deposed that it is for these reasons that the administrators changed their advocates to Kusow & Company Advocates, and a Notice of Change of Advocates was duly served. In view of this change, the Orders dated 30th April 2020 should be varied to exclude the three law firms and for the firm of Kusow & Company to be included.
 7. The applicant filed a Supporting Affidavit where she deposed that Order 9 Rule 5 of the Civil Procedure Rules stipulates that no consent is required during a change of advocates.
 8. In addition, she stated that according to the court order, the proceeds from the sale were not to be held as a lien for legal fees. The applicant deposed that the advocates have been difficult and arrogant towards the administrators.
 9. In response to the application DB Wati and Company for 4th Admin filed a Notice of Preliminary Objection dated 21st September 2023. The P.O. was as follows:
 - a. The application dated 27th June 2023 of Kusow & Co. Advocates violates Rule 6 of the Advocates (Practice) Rules 1966.
 - b. The learned counsel did not first reach out to D.B Wati Co. & Advocates on whether or not they have any objection before purporting to take over the matter.
 - c. The application is an abuse of the process of the court for the further reason of want of jurisdiction and should alongside the Notice of Change of Advocates, be struck out.
 10. Mr. Amani Ndungu from the firm of S.K Amani Advocates opposed the application. Mr. Ndungu deposed that he represents the 3rd administrator. He deposed that it was agreed by the administrators, particularly the 3rd administrator that proceeds from the sale could be used to make statutory payments, pay service providers, reconstruct files at the land registry, pay legal fees and the remainder of the monies



were to be distributed to the beneficiaries. Counsel annexed a copy of a WhatsApp message from the 3rd administrator.

11. Mr. Ndungu deposed that the draft bill of costs shows that the total amount owed to the advocates outweighs the monies that were held in the joint account. Therefore, it is just that the monies held in the joint account are to be held until the said Bill of Costs is taxed.
12. Ms. Nyang' also filed Preliminary Objections dated 21st September 2023 which I have considered.
13. Parties canvassed the application by way of written Submissions which I have read and considered.

Determination

14. I have considered the application, the affidavits, the submissions and the entire court record.
15. The first issue is whether the firm of Kusow & Co. Advocates is properly on record. A party to a suit is at liberty to choose their preferred counsel to represent them. Order 9 Rule 5 of the [Civil Procedure Rules](#) provides for the Change of Advocates. The Rule requires that a Notice of Change of Advocates be filed in Court and the same be served upon the former counsel. This was followed and their respondents have not contended with it. Their major issue was that this change of counsel was an ambush to them. I am therefore satisfied that the firm of Kusow & Company Advocates is properly on record.
16. The second issue is whether the Orders dated 30th April 2020 were set aside. The 3rd Respondent submitted that the advocates agreed by consent to have the consent order set aside. Hence, an Order that has been set aside cannot be varied. There is no evidence on record of the advocate's consent. Moreover, all consent by parties should be recorded as an order of the court. This was not done. The Ruling of this Court dated 14th September 2020, did not mention the said consent. In my view, the Order dated 30th April 2020 still stands.
17. On the issue of legal costs payable, the respondents deposed that they have drawn up their Bill of Costs that is yet to be taxed. So, can the respondents hold the funds as a lien for their legal fees? Counsel for the administrators cited the case of [Graham Alder and 3 Others v. Stephen Musalia Mwenesi t/a S. Musalia Mwenesi Advocates](#) (2015) eKLR and the case of [Simon Maghanga v. Joyce Jeptarus Kagongo t/a Chesaro & Co. Advocates](#). In both cases, the court held that the advocate's right to lien must be substantiated, and before the Bill of Costs is taxed, the entire amount belongs to the client.
18. From the foregoing, I allow the application dated 27th June 2023 and I make the following orders:-
 - a. That within 60 days from the date of this Ruling, the firm of D.B Wati & Co. Advocates, S. J Nyang & Co. Advocates and S.K Amani & Associates Advocates file a joint inventory of account on all proceeds received from the sale and how the funds were utilized.
 - b. The remainder of the funds be deposited in a joint interest-earning account held by Kusow & Company Advocates and the administrators.
 - c. The respondents are at liberty to tax their Bill of Costs.
 - d. Costs be in the cause.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2024

E.K. OGOLA

JUDGE



In the presence of:-

N/A for the Administrators

Mr. Aati for the 1st Respondent

Ms. Nyang' for the 2nd Respondent

Ms. Nyang' h/b for Mr. Amani

Gisiele Muthoni Court Assistant

