



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Yohana Mikhago Majanja (Deceased) (Succession Cause
86 of 1999) [2023] KEHC 2700 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2700 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 86 OF 1999**

WM MUSYOKA, J

MARCH 24, 2023

**IN THE MATTER OF THE ESTATE OF YOHANA MIKHAGO MAJANJA
(DECEASED)**

RULING

1. The application for determination is the Motion, dated July 30, 2021. It is premised on Order 45 of the *Civil Procedure Rules* and sections 1A, 1B and 3A of the *Civil Procedure Act*, Cap 21, Laws of Kenya. It seeks stay of orders that were made on June 23, 2021, review or setting aside of the orders made on June 23, 2021 and revocation of the confirmed grant issued on November 28, 2013. It is brought at the instance of Geoffrey Mwinamo Seta, the applicant.
2. The applicant is a grandchild of the deceased. He avers that his father, and a son of the deceased, the late Peter Seta, should have inherited Idakho/Shiseso/1067. He complains that his late father was not involved in the cause, as he never told them about it, and that he died in 2006, before the grant was confirmed. He states that he was served with an application to substitute his father, and he had also been served with the application dated May 10, 2021. He said that his late father had leased Idakho/Shiseso/1067 to Victor Ambeyi Inyanza, and he used it for 7 years, he never sold it to him. He said that Victor Ambeyi Inyanza was unable to provide evidence that he had bought the land from his late father. He argues that the court was misled to believe that Victor Ambeyi Inyanza had an interest in Idakho/Shiseso/1067. He would like the certificate of confirmation of grant to be annulled, and a fresh one issued without the name of Victor Ambeyi Inyanza.
3. Victor Ambeyi Inyanza has responded to the application. His affidavit was sworn on October 13, 2021. He says that the estate of the deceased comprised of Idakho/Shiseso/1063, 1067 and 1117. He explains that Idakho/Shiseso/1063 and 1117 were distributed and there were no issues around them. He states that Idakho/Shiseso/1067 was given to the father of the applicant, the late Peter Seta, and Victor Ambeyi Inyanza, on 11th March 2003, and a certificate of confirmation of grant issued. He said that he bought that portion in 1998 and 2000, from the late Peter Seta. He avers that the succession proceedings commenced in 1999, and involved all family members, including the said father of the applicant. He avers that the late father of the applicant attended court at the confirmation of the grant,



- after which he and Victor Ambeyi Inyanza signed form RL7 to facilitate distribution. He says that it was misguided for the applicant to argue that confirmation was done after the demise of his father.
4. He has attached documents, bearing divers dates in 1998 and 2000, when he says he allegedly bought the disputed land. There is also copy of form RL7, dated March 26, 2003, executed by Peter Seta and Victor Ambeyi Inyanza, and Carol Shakwama Mikhako. A search certificate on Idakho/Shiseso/1067, shows that it was registered in the name of Peter Seta and Victor Ambeyi Inyanza on April 29, 2003. A certificate of confirmation of grant shows that the grant was confirmed on March 11, 2003.
 5. The other reply to the application is by Carol Shakwama Mikhako. His affidavit was sworn on October 13, 2021. He is the administrator of the estate. He avers that at confirmation of grant all the children of the deceased, including the father of the applicant, agreed to have Victor Ambeyi Inyanza included in the list of heirs and to have a share allocated to him. She said that Victor Ambeyi Inyanza was allowed into the proceedings as he had bought a portion of Idakho/Shiseso/1067 from the late Peter Seta. He asserts that it was not true that the grant was confirmed after the said Peter Seta died in 2006, but on March 11, 2003, with the said Peter Seta in attendance. He avers that he was the one who introduced the applicant into the proceedings, to substitute his late father. He asserts that the late Peter Seta did not object to the participation of Victor Ambeyi Inyanza.
 6. Victor Ambeyi Inyanza has sworn another affidavit, on February 7, 2022, which largely reiterates the contents of his earlier affidavit. The only new thing is the clarification that the late Peter Seta died on January 24, 2007.
 7. Directions were taken on February 10, 2022, for canvassing of the application dated July 30, 2021, by way of written submissions. Both sides have filed written submissions, which I have read and noted the arguments advanced.
 8. The deceased herein died in 1992. Representation to his estate was made to Carol Shamwana Mikhako on May 23, 2000, and a grant was duly issued, dated May 29, 2000. The same was subsequently confirmed on March 11, 2003, and a certificate of confirmation of grant was duly issued, bearing an even date. The summons upon which the confirmation orders were made was dated February 20, 2002, and it proposed that Idakho/Shiseso/1067 be shared out between the late father of the applicant and Victor Ambeyi Inyanza. There was no form 37. The application was placed before Khamoni J on March 11, 2003. The administrator, Athanas Mikhako, Vincent Mikhako, Victor Ambeyi Inyanza and Fabian Kenyatta Mikhako were present. Valentine Mikhako, Nicholas Liyayi Mikhako and Peter Seta Mikhako were absent. The grant was confirmed. The applicant was brought into the proceedings in 2013, by way of substitution, and the certificate of confirmation of grant of 2003 was amended to substitute the name of his father with his.
 9. The application before me is for review of the confirmation orders, for it is not premised on section 76 of the *Law of Succession Act*, Cap 160, Laws of Kenya, which provides for revocation of grants, but on Order 45 of the *Civil Procedure Rules*, which is imported into probate practice by Rule 63 of the Probate and Administration Rules. Review is obtained on the basis of an error on the face of the record and discovery of important evidential material that was not available at the time when the impugned order was made. The applicant has not alleged any error on the face of the record, nor discovery of new evidence. A case for review has, therefore, not been made out.
 10. The grant was confirmed during the lifetime of his father. The confirmation was in 2003, and he died in 2007. If his father had any issues, he would have raised them. I have seen documents showing that his late father sold a portion of his interest in the property to Victor Ambeyi Inyanza, and his siblings seem to have been aware of that, hence their agreeing to have the said Victor Ambeyi Inyanza included in the proceedings. There is a document on record, which shows that the late Peter Seta executed a form RL7,



15 days after the grant was confirmed, to facilitate the transmission of Idakho/Shiseso/1067 to himself and Victor Ambeyi Inyanza. Everything points to the late Peter Seta being aware of these proceedings, participating in them, and not raising any objections. It is now too late for the applicant to raise the issues after his father, who sold a portion of the land, died.

11. I find no merit in the application dated July 30, 2021, and I hereby dismiss the same. The interim order made on August 2, 2021 is accordingly discharged. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS.....24th
.....DAY OFMarch.....2023**

WM MUSYOKA

JUDGE

Erick Zalo, Court Assistant

Ms. Andia, instructed by Andia & Co., Advocates for the applicant.

Ms. Olonyi, instructed by Maureen Olonyi & Associates, Advocates for the administrator and Victor Ambeyi Inyanza.

