



REPUBLIC OF KENYA



**In re Estate of Charles Shikali Shivachi (Deceased) (Succession Cause
61 of 2011) [2023] KEHC 3507 (KLR) (28 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3507 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 61 OF 2011**

WM MUSYOKA, J

APRIL 28, 2023

IN THE MATTER OF THE ESTATE OF CHARLES SHIKALI SHIVACHI (DECEASED)

RULING

1. The application, dated April 6, 2022, seeks orders to restrain David Mpapale from utilizing Idakho/Iguhu/1771. It is brought at the instance of Moses Shikali Shivachi. David Mpapale is described as an intermeddler, being a person who is not a beneficiary of the estate. He is said to be carrying out agricultural activities on the land.
2. Moses Shikali Shivachi is one of the administrators that Njagi J appointed, in a ruling that he delivered on April 30, 2019, when an earlier grant was revoked, and restoration of Idakho/Iguhu/1771 to the name of the deceased was ordered. There was a further order that the new administrators, appointed on April 30, 2019, go on to apply for confirmation of grant.
3. Following the orders of April 30, 2019, a summons for confirmation of grant was filed by Ruth Miheso, an administratrix, on June 11, 2019, proposing distribution of the estate, comprising of Idakho/Iguhu/1771, 1773 and 1774, between Justus Shikali Shivachi, Moses Shikali Shibachi, Ruth Miheso and Moreen Isiaho Shikali. Brown Miheso Shikali is not allocated anything.
4. That summons for confirmation of grant attracted affidavits of protests by Justus Shivachi Shikali and Moses Shibachi Shikali. The 2 protestors raise issues around Idakho/Iguhu/1771, saying that it had been sold to third parties. Brown Miheso Shikali was said to have had sold a portion of it to Jackylyne Lirhandu; while Moreen Isiaho Shikali and Ruth Miheso had sold the portion to David Liyai Mpapale. There are also claims that after they sold Idakho/Iguhu/1771, they were bought land elsewhere. There is also a claim that they had also sold Marama/Lunza/3713 to a certain Joyce. The protestors would like the court to visit the parcel of land in question, and to summon personnel from the Directorate of Criminal Investigations at Kakamega Police Station, David Liyai Mpapale, Gladys Shisia Namakhabwa and James Maumu.
5. The confirmation application, and the protest to it, are yet to be heard and determined. Directions, on its disposal, were given on February 18, 2020, and it was directed that it be disposed of by way of oral evidence. Hearing was slated for May 13, 2020. The record is silent on what happened on May 13,



- 2020, but the matter came up again on July 14, 2020, when the parties were absent. The matter was again fixed for hearing on February 4, 2021, but it is not clear what happened on February 4, 2021. Eventually, the directions for an oral or viva voce hearing were varied by F. Amin J, on March 9, 2021, and substituted with disposal by way of written submissions. A date for ruling was fixed for June 2, 2021. No ruling was delivered.
6. In the interim period, a variety of applications were lodged in the matter. An undated application was filed on May 17, 2021, which I directed should be served, but its disposal await delivery of the ruling that F. Amin J was to write on the confirmation application. That application was placed before F. Amin J on June 2, 2021, and directions were given for its service on, among others, David Liyai Mpapale, who it appeared to target specifically. The undated application was then listed for hearing on October 5, 2021, which did not happen, for an undocumented reason. It came up again on December 15, 2021, when it was adjourned due to ill-health of one of the parties.
 7. While the 2 applications were still pending, that is the summons for confirmation of grant and the protest to it, and the undated application, another application was lodged in the matter, dated April 6, 2022, the one that I am now tasked with determining.
 8. The primary function of probate and administration proceedings is distribution of the estate. Njagi J directed the parties to file and serve an application for confirmation of grant. That application was filed and served, and it attracted responses, by way of protests. Directions were given on its disposal, mine, for viva voce, which were later varied by F. Amin J, for written submissions. The subsequent applications serve to only delay the distribution. The issues raised in those applications can be dealt with within the context of the confirmation application and the protests. The court can deal with whether Jackylyne Lirhandia, Joyce, David Liyai Mpapale, Gladys Shisia Namakhabwa and James Maumu are entitled to a share or the whole of Idakho/Iguhu/1771 in the confirmation application. Likewise, whether the court should visit the land, is a matter that can be addressed within the confirmation application. The parties should focus on the central issue, which is distribution of the estate, rather than train their eyes on peripheral matters, that will not add value to the final goal.
 9. The final order that I shall make, with regard to the application, dated April 6, 2022, is to direct that it be heard together with the summons for confirmation of grant and the protests, which I hereby do. This order should apply to any other pending application, as the determination of the confirmation application would address all the issues that are raised in the other pending applications. On how the confirmation application ought to be disposed of, I shall direct that the same be placed before the Judge for further directions. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 28TH DAY OF APRIL 2023

WM MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Representation for the Parties

Ms. Wilunda, instructed by EA Wilunda & Company, Advocates for Moreen Isiaho Shivachi and Ruth Miheso.

Mr. Getanda, instructed by Onsando Getanda & Company, Advocates, instructed by Brown Miheso.

Justus Shikali Shivachi and Moses Shikali Shibachi, in person.

