



**In re Estate of Jairo Okunyanyi alias Jairo Okunyanyi Amwayi (Deceased) (Succession Cause 539 of 1995) [2023] KEHC 24723 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24723 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 539 OF 1995  
SC CHIRCHIR, J  
OCTOBER 26, 2023**

**IN THE MATTER OF THE ESTATE OF JAIRO OKUNYANYI  
ALIAS JAIRO OKUNYANYI AMWAYI ( DECEASED)**

**BETWEEN**

**SHANTI WECHE ASANGO ..... PETITIONER**

**AND**

**ESAU OMBITO OKUNYANYI ..... RESPONDENT**

**RULING**

1. The Applicant herein filed a Notice of motion application dated 23<sup>rd</sup> January 2023 seeking the following orders;
  - a. That the application be certified as urgent.
  - b. That the District Land registrar be ordered to cancel, revoke, nullify the sub-division of LP No Kisa/Mundobelwa/61 which gave rise to LP No Kisa/Mundobelwa/ 1585, 1587, 1588 and 1589 registered in the respondent herein and Muselebo Main Missionary Service and the same be registered in the name of the applicant who is the petitioner in the cause.
  - c. That costs be provided for.
2. The application is supported by an affidavit sworn by the petitioner/applicant who deponed that he is the son of the late Asango Kunyanyi who was the Administrator of the Estate of the deceased.
3. He has further stated that his father filled the present petition and was issued with a Grant of letters of Administration, but his father passed away on 27<sup>th</sup> July 2009, when the succession proceedings were still pending in court. He then applied for and was allowed to took up the Administration of the deceased's Estate.



4. He further states that on 22<sup>nd</sup> February 2022, the grant was confirmed and he was issued with a certificate for confirmation of the grant.
5. However, it later came to his attention that the Respondent had secretly and fraudulently sub-divided Title No LP No Kisa/Mundobelwa/61 into LP No Kisa/Mundobelwa/ 1585, 1587, 1588 and 1589 and that therefore the original parcel no longer exists.
6. The applicant further deposes that in 2003, his late father had filed a suit being MISC. Applic. No 151 of 2003 against the Respondent in respect to Title No Kisa/ Mundobelwa /61 and obtained an order directing the surrender of the title to the now deceased Administrator. The Administrator passed away before he could register the order at the Land's Registry.
7. He prays that this court does order the District Land Registrar to cancel, revoke and or nullify Title Nos: LP No Kisa/Mundobelwa/ 1585, 1587, 1588 and 1589 and the same be reverted back to the original LP No Kisa/Mundobelwa/61 and register the same in the applicant's name.
8. The respondent did not file any response to the Application.

### **Determination**

9. A brief background to this matter is necessary:
  - a) On 27<sup>th</sup> October 1995, One Asango Kunyanyi (Now Deceased) petitioned for letters of Administration in respect to the Estate of Jairo Okunyanyi ( Deceased).
  - b) In the petition, the survivors listed was the Respondent herein, and Land parcel No. Kisa/ Mundobelwa / 61 was the only asset of the Estate. A Grant of letters of Administration was issued to the late Asango Kunyanyi
  - c) The record shows that the Administrator died on 27<sup>th</sup> July 2009 and following an Application filed in this court, the Applicant herein was appointed an Administrator of the Deceased Estate , and at the same time, the Grant was confirmed.
  - d) In the certificate of confirmation of Grant, the above parcel of land was distributed as follows:
    - (i) Jason Inganga Kunyanyi- 0.040 ha
    - (ii) Johannes Kimni Kunyanyi- 0.40 ha
    - (iii) Essau Ombito Kunyanyi- 0.30 ha
    - (iv) Julius Mbale- 0.10 ha
    - (v) Shanti Weche Asango- 0.9 ha (to hold in trust for the estate of Asango Kunyanyi
    - (vi) John Alucheli Kutwa-0.1 ha
  - e). When the Applicant went to register the certificate at the ministry of lands, she found that it could not be done, as the Land parcel had already been sub- divided as aforesaid, hence the present Application.

### **Determination**

10. The Applicant has attached various certificates of search showing that indeed parcel No Kisa/ Mundobelwa/61 has been sub- divided into parcel Nos Kisa/ mundobwewa 1587,1588,1586 and 1585. The certificates show that parcel No 1586 and 1587 were registered in January 1976 in favour of



the Respondent, while parcel No 1585 was registered in 1996 also in favour of the Respondent. Parcel No 1588 was registered in February 2013 in favour of Muselebo main missionary service.

11. From the foregoing it is evident that Title Nos 1588 1585 were transferred after the demise of the deceased.
12. This follows that the sub-division of the Deceased land in 1996 , when no representation had been made was a case of intermeddling in the Estate of the deceased person and an outright case of fraud as the transfer documents , if any, were obviously signed by a person who had no authority to do so.
13. Title Nos 1586 and 1587 were purportedly transferred in 1976 , when the deceased was still alive. However when the deceased Administrator petitioned for letter of Administration, among the documents accompanying the petition was a certificate of search in respect to title No kisa/ Mundobelwa/61. The Title was then in the name of the Deceased, Jairo Okunyanyi. The search certificate was issued on 27<sup>th</sup> October 1995. If this Title had been sub -divided and new Title numbers issued then the search certificate issued on 27/10/1995 would have been reflecting different entries. It follows that this was another act of fraud where the transfer documents, again, if any, were backdated.
14. I have no hesitation in holding that the sub- division of Title No Kisa/ Mundobelwa/61 was illegal and fraudulent. The Applicant's Application is merited. The sub- division and any subsequent transfers must be cancelled. This will allow the Applicant to transmit the property in terms of the certificate of confirmation that has already been issued.
15. However, the following the cancellation, the Title cannot be registered in the name of the Applicant as she is not the only beneficiary to the Deceased's Estate. Further, the Estate has already been distributed as per the certificate of confirmation of Grant issued on 23<sup>rd</sup> February 2022.
16. Consequently, I make the following orders:
  - a). The sub- division of Title No Kisa/ Mundobelwa / 61 into Kisa/ Mundobelwa/1585,1586,1887 and 1588 or any other sub- Title is hereby cancelled/ revoked and the Title to revert back to Kisa/ Mundobelwa/ 61 in the name of Jairo Okunyanyi .
  - b). The Registrar of Lands to effect order (a) above
  - c). There shall be no orders as to costs

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAKAMEGA THIS 26<sup>TH</sup> DAY OF OCTOBER, 2023.**

**S.CHIRCHIR**

**JUDGE.**

In the presence of :

E. Zalo- Court Assistant

No appearance by the parties.

