



**In re Estate of Samuel Ahuli Aluvisia aka Ahuli Aluvisia (Deceased) (Succession Cause 310 of 2013) [2023] KEHC 26306 (KLR) (30 November 2023) (Judgment)**

Neutral citation: [2023] KEHC 26306 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 310 OF 2013  
SC CHIRCHIR, J  
NOVEMBER 30, 2023**

**BETWEEN**

**RAPHAEL MWALE MUHANDA ..... 1<sup>ST</sup> PETITIONER**

**BENSON LUNG'AYIA ..... 2<sup>ND</sup> PETITIONER**

**AND**

**NATHAN BULINDA IBALASIA ..... PROTESTOR**

**JUDGMENT**

1. This cause relates to the Estate of Samuel Ahuli Aluvisia alias Ahuli Aluvisia (Deceased) ,who died intestate on 20<sup>th</sup> June 2008.
2. Following orders of citation given in succession cause No. 302 of 2009 the 1<sup>st</sup> petitioner, then as citor got the mandate to apply for Grant representation to the Deceased's Estate. He proceeded to file succession cause No. 622 of 2011. He described himself as the purchaser of the only asset of the Estate namely land parcel No. Isuka/ Shiakungu/1950. The grant was issued on 8<sup>th</sup> June 2012 and confirmed on 17<sup>th</sup> September 2013. In the confirmation the whole of the said parcel went to him.
3. On 16<sup>th</sup> may 2013, the 2<sup>nd</sup> petitioner filed a separate petition, under succession cause No. 310 of 2013. The grant was issued to him on 23<sup>rd</sup> April 2014. He described himself as a liability to the estate. He had also obtained a citation order issued under Citation cause No. 623 of 2009.
4. On 20<sup>th</sup> November 2015, the one Nathan Bulunda, (the objector) applied for revocation of the grant of letters of administration in the present Succession cause. His claim is that of the purchaser's interest, and further accused the petitioner in succession cause No 310 of 2013 of failing to disclose the fact that the deceased had children.
5. The two succession causes were consolidated on 26<sup>th</sup> April 2021 and cause No.310 was designated as the lead file. Following the consolidation, the confirmation orders in cause No. 622 of 2011 were



- vacated and the certificate of confirmation of Grant cancelled. The petitioners were then appointed as Co – Administrators of the Estate and were directed to file fresh summons for confirmation of Grant.
6. The summons for confirmation were filed on 27<sup>th</sup> July 2021 and a protest in respect thereof was filed on 20<sup>th</sup> August 2021. The objector filed a protest to the said summons. The court directed the hearing to proceed by oral evidence.
  7. Pw1, the protestor, adopted his Affidavit of protest sworn on 16<sup>th</sup> August 2021. He deponed that he purchased the entire Land Parcel No. Kakamega /Shagungu/1217 from the deceased but deceased died before the transfer of the property could be done. He produced a sale agreement dated 4<sup>th</sup> June 2007. He later sued the widow of the deceased who had refused to transfer ownership in Shinyalu Land Dispute Tribunal, under claim No. 9 of 2008. He further stated that the award was in his favour. The said award was given on 1<sup>st</sup> April 2009 and later adopted in Kakamega Chief Magistrate's court as award No .41 of 2009 on 23<sup>rd</sup> November 2009.
  8. In his oral testimony, he told the court that he bought 4 acres from the deceased at Kshs. 580,000/= took over possession, and developed the property. However, he was not given the title deed and that the deceased passed on before the transfer could be done. He then sued the widow as aforesaid and won the case.
  9. He further stated that he does not know the 1<sup>st</sup> petitioner as he was not a party to the tribunal case and the said petitioner is not in occupation of the land. He denied any knowledge of civil suit No. 249 of 2008 allegedly filed by the 1<sup>st</sup> petitioner.
  10. He further testified that the 2<sup>nd</sup> petitioner is his neighbour but the deceased had not informed him about selling the land to him. He insisted that he is the one in occupation.
  11. He relied on the judgment of the tribunal and its adoption at the magistrate's court and claim ownership of the entire Land Parcel No. Kakamega /Shagungu/1217.
  12. On cross examination, he told the court that he had paid Kshs. 470,000/= out of the agreed price of ksh. 580,000; He admitted that the tribunal had ordered him to pay the balance which he had not. He told the court that the deceased's widow was still alive. He claimed that the land had not been subdivided at the time of the tribunal's case. He however acknowledged that the land had been split into 3 portions.
  13. He further told the court that he bought the land on 4/6/2007; that he only heard of the subdivision for the first time in court. He admitted that he registered the caution on parcel No. 1950. He denied having seen the proceedings in civil suit No. 249 of 2008 despite having been sued as the 2<sup>nd</sup> defendant. He further stated that parcel No. 1949 was not in existence as at June 2007 when he did the purchase. He was only made aware of parcel No. 1217; that he was not aware whether the 1<sup>st</sup> and 2<sup>nd</sup> petitioners were claiming 1950 and 1951 respectively.
  14. At re- examination, he stated that the tribunal ruled that the three titles, that is 1950,1949 and 1950 be collapsed into 1217 and be transferred to him. He stated that he took the balance of the purchase price to the widow of the deceased 3 times but she refused to accept.
  15. DW1, was the 2<sup>nd</sup> petitioner. He told the court that the deceased sold him the land before he died however his Title deed had not yet been processed by the time the deceased died. He stated that Land parcel No. Isako/Shikungu/ 1217 was sub- divided into 1949, 1950 and 1951 and 1951 was sold to him. He further stated that he has been using the land from 28/10/1998 to date. He stated that the protestor's land is adjacent to his, and the protestor's portion is 1949. He supports the mode of distribution as proposed by the 1<sup>st</sup> petitioner



16. On cross examination, he told the court that he had known the 1<sup>st</sup> petitioner for 10 years and he had been in use of the land. He claimed that the protestor also uses his portion but he keeps interfering with boundaries. He was not aware about the proceedings allegedly held in at the Shinyalu Land tribunal.
17. He stated that according to the green card, parcel No. 1217 was closed upon sub- division and that the deceased is the one who showed him the boundaries of his land, and which boundaries are still intact.
18. DW2, was the 1<sup>st</sup> petitioner. He told the court that he was relying on his two Affidavits sworn on 9.12.2021 and 15.6.21 and his statement dated 26.5.22
19. According to the said affidavits and statement he averred that he purchased parcel No. Isukha/ Shiakungu/1950 measuring 1.5 from the deceased, which parcel was a sub- division of Land Parcel No. Kakamega /Shagungu/1217.
20. He further stated that the deceased applied for consent to transfer from the Shinyalu Land Control Board but the deceased died before the transfer process was completed. He further claimed that upon the deceased's demise, he filed a citation against the widow of the deceased.
21. He proposed the mode of distribution as follows;
  - a. Raphael Mwale Muhanda - Isukha/ Shikungu/1950
  - b. Benson Lung'anya Bulunya- Isukha/ Shikungu/1951
  - c. Nathan Bulinda Abalasia- Isukha/ Shikungu/1949
22. In his oral testimony he added that that he bought the land in 2004. He produced the official search which show that the protestor placed a caution on the land. He further stated that he filed suit at Kakamega chief Magistrate's court being CMCC 249 of 2008 where he sued the deceased and the protestor claiming for his portion of the land..
23. He prayed that all the parties be allocated the parcels that they bought from the deceased. He insisted that the deceased subdivided parcel No.1217 before he died.
24. DW3, was one Boaz Atsango. He told the court that he witnessed the transaction between the 1<sup>st</sup> petitioner and the deceased. He witnessed the agreement on 14.1.2004. The 1<sup>st</sup> petitioner then leased the land to him for about 3 years thereafter. He used the land until 2006.
25. DW4, adopted his witness statement dated 26/5/2022 as his evidence in chief. He claimed that he directed the 1<sup>st</sup> petitioner who wanted to buy the land to the deceased and was a witness to the transaction.

Protestor's submissions

26. It is the protestor's submissions that he has demonstrated that he bought the land from the deceased. That further he obtained an award in his favour in The Shinyalu Land Disputes Tribunal Case No. 9 of 2008, which was adopted as judgment of the court in Kakamega CMCC award no. 4 of 2009 which the award had not been set aside or appealed against. He contends that the decree arising therefrom is binding in rem.
27. He claims the whole parcel of the deceased and relied in the case of *Florence Nyaboke Machani vs. Mogere amosi Ombui & 2 others* (2014) eKLR and *in re estate of Kabatha Kathemba (deceased)*eKLR to buttress his submissions 1st petitioner's submissions



28. The 1<sup>st</sup> petitioner has submitted that he has provided evidence to show that he purchased land parcel No. 1950; that the protestor's alleged sale agreement for 1217 does not bear the title No; that the protestor did not call any witness to back up his claims to the land. Finally, he proposes that the land should be distributed to all of them as per the portion that each had purchased.
29. The 2<sup>nd</sup> petitioner did not file any submissions  
Determination
30. I have considered the evidence tendered and parties' submissions. The only issue for determination is one, and that is whether the parties herein are liabilities to the Estate of the deceased.
31. The objector's case is that he purchased parcel No. Kakamega/ shagungu/ 1217 in June 2007. He has attached a sale Agreement signed on 4<sup>th</sup> June 2007. He further stated that the deceased died before he could transfer the land. He then decided to sue the deceased's widow, one Marita Ayuma Ahuli before the Shinyalu Land Disputes Tribunal under claim No. 09 of 2008. The tribunal returned the verdict in his favour and ordered the widow to transfer the Land to him. The tribunal proceedings were produced in evidence.
32. On the other hand, the petitioners' case is that they all purchased the same land, but which had then been sub- divided into parcel Nos. 1949, 1950 and 1951. That the sub- divisions were done during the life time of the deceased and therefore each should be allocated their portions as they are all liabilities to the Estate.
33. I have seen the various sale Agreements. The 1<sup>st</sup> petitioner's Agreement with the deceased is dated 17.01.2004. It is for the sale of a portion of 1.5 acres out parcel No. 1217. It was witnessed by several witnesses. Thereafter, there were several signed acknowledgments of funds which was apparently being paid in instalments.
34. The 2<sup>nd</sup> petitioner's claim for parcel No. 1951 is based on an Agreement signed on 8.10.1998. The sale was a portion measuring 37m by 37m, at a cost of ks. 84,000.
35. The Objector's Agreement was signed on 4<sup>th</sup> June 2007. It shows that he purchased 4 acres for ksh. 580,000. The Agreement however does not have the parcel No, of the land forming the subject matter of the transaction.
36. Thus, all the parties herein have evidence of having purchased the land from the deceased. However, whereas the petitioners' sales Agreement are expressed to have been in respect to only a portion of parcel No. 1217, the one for the objector was in respect to the whole land. I hasten to add however that the objector's agreement does not refer to a specific land parcel.
37. The role of this court is not to determine land disputes as to ownership. Rather it is to establish if there were liabilities that had crystallized by the time of the deceased's demise, and therefore enforceable against the Estate.
38. There is evidence that the Protestor approached the Shinyalu Land disputes tribunal in respect to his claim to land parcel No. Isakho/ shigungu / 1217 where he sued the deceased's wife. The tribunal case, Claim No. 9 of 2008 was later adopted as an order of the court at the Kakamega Chief Magistrate's court under award No. 41 of 2009. The Tribunal's verdict was as follows:
  - i). We order the objector herein One Marita Ayuma Ahuli to file succession proceedings at the high court in the matter of the parcel of land No. Kakamega/ shagungu/1217 ( 1949/1950/1951).



- ii). We order the claimant herein one Nathan Bulida Ibalasa to pay the balance of KSh. 110,000 to the objector herein Marita Ayuma Ahuli
  - iii). We order the objector herein Marita Ayuma Ahuli to wholly transfer the parcel of Land No. Kakamega/. Shagungu/ 1217( 1949/1950/ 1951) to the claimant herein one Nathan Bulinda Ibalasa
  - iv). We order for the removal of the Tribunal's restriction lodged on the parcel of land No. Kakamega / Shagungu/ 1217(1949/ 1950/1951)
39. whether or not the petitioners were aware about the said proceedings, whether the decision was right or wrong or whether the Tribunal had jurisdiction, for example, are immaterial for the purposes of these proceedings. Whether the petitioners or anybody else had an issue with the Tribunal's decision therefore is now water under the bridge.
40. There is no evidence that the Tribunal's decision was reviewed, appealed against, set aside or stayed. It remains a binding order of the court and as pointed out by the protestor, it is an order in Rem, binding all and sundry.
41. There is the question of whether the agreement signed by the protestor and the deceased was in respect of parcel No. 1217, considering that the agreement does not make a reference to any land parcel. However, that was a question to be determined by the Land's Tribunal or an appeal if the tribunal's finding had been challenged. To the extent that the tribunal seemed to have accepted that the agreement was in respect to parcel No. 1217, it remains so. It is not for this court to question it as it has no jurisdiction to do so and as pointed out, too late in the day in any event.
42. In a nutshell therefore, it is only the protestor who has demonstrated that he was a liability to the Estate in respect to the only property of the Estate namely Title No. Kakamega / Shagungu/ 1217 as his right has already been determined by a court of competent jurisdiction.
43. In view of the foregoing, I hereby proceed to make the following orders:
- a). That the Grant of letters of Administration granted to Benson Lung'anya Bulanya and Raphael Mwale Muhanda is hereby confirmed
  - b). The whole of that parcel of land known as Tile No. Kakamega/ Shagungu/1217 devolves upon Nathan Bulinda Ibalasia
  - c). The Land Registrar, kakamega county is hereby ordered to cancel the sub- divisions emanating from the said parcel, that is Kakamega / shagungu/1949, kakamega/ shagungu/1950 and Kakamega/ Shagungu/ 1951 and the Title to revert back to the original Tile No. kakamega/ shagungu/1217 in the name of Samuel Ahula Alubisia alias Ahuli Aluvisia to facilitate its transmission to the objector.
  - d) Each party to meet their own costs.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 30<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**S. CHIRCHIR.**

In the presence of :

E. Zalo- court Asisstant

1<sup>st</sup> petitioner present in person



2<sup>nd</sup> petitioner in person

3<sup>rd</sup> petitioner in person .

