



**In re Estate of Hudsson Sitweti Kulundu alias Hudson Sitweti Kilundu (Deceased)
(Succession Cause 258 of 2000) [2023] KEHC 27145 (KLR) (19 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27145 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 258 OF 2000
SC CHIRCHIR, J
DECEMBER 19, 2023**

**IN THE MATTER OF THE ESTTAE OF HUDSSON SITWETI KULUNDU
ALIAS HUDSON SITWETI KILUNDU----- (DECEASED)**

BETWEEN

JOHN KISIANGANI SITWETI ADMINISTRATOR

AND

PATRICK WALUBENGO 1ST APPLICANT

SOLOMON SITWETI KULUNDU 2ND APPLICANT

RULING

1. The Applicant's Application dated 21st September 2023 seeks the following orders:
 - a. That the orders issued on 24th April 2015 closing the file for non-action be set aside
 - b. That the 1st administrator herein be substituted by Solomon Sitweti Kulundu and an amended grant of letters of administration be issued in the names of Solomon Sitweti Kulundu And Patrick Walubengo Kulundu
 - c. That the amended grant of letters of administration be confirmed
 - d. That costs be in the cause.
2. In the affidavit in support of the application, the applicant asserts that the grant of letters of administration was issued by the court on 10th April 2003 and the matter closed on 24/4/2015; that the then administrator, John Kisiangani Sitweti has since died. A copy of the Administrator's death certificate is attached.



3. They now aver that the family have appointed the two applicants Solomon sitweti kulundu and Patrick walubengo kulundu to jointly administer the Estate of deceased.
4. On confirmation, they have proposed to share equally the following properties:
 - a). Bungoma/Kamukoiwa/08
 - b). Bungoma/Kamukoiwa/624
 - c). Bungoma/Kamukoiwa/396
 - d). Bungoma/Kamukuywa/401
 - e). Buildings Natiri corner 4
 - f). Ndivisi/Ndivisi/758
5. The application was not opposed.

Determination

6. The cause relates to the Estate of the Hudson Sitweti Kulundu (Deceased), who died on 24th February 1999. John Kisangani Sitweti, his son, was appointed as the Administrator of the Estate. The Applicant states that the said Administrator died on 25/11/2015. On record is death certificate No. 0335940 in respect to the said demise of the Administrator. They also pray that, this cause which had been closed be reinstated and that after reinstatement, the grant be confirmed. They have proposed the mode of distribution as set out in paragraph 4 hereof. This prayer is merited.
7. On prayer 2 of the Application, there is no consent from the other beneficiaries, approving the appointment of the two Applicants as Administrators of the Estate. What I see is simply a consent approving the mode of distribution. For this reason, the appointment is declined
8. The prayer for distribution too is denied and this is why: In a consent form for distribution earlier filed, on 2nd July 2007, I counted more than 28 beneficiaries and Nine (9) properties. In the present Application, the properties have reduced to 5 and the beneficiaries to only two, the Administrators herein. No explanation has been offered as to what happened to the other beneficiaries and where the other properties have disappeared to.
9. Under section 71(2) (d) of the *Law of succession Act*, this court is empowered to decline confirmation of a grant where the identities of the beneficiaries and their respective shares in the Estate have not been ascertained. The Applicants herein have failed to make full disclosure.
10. In conclusion, I hereby proceed to make the following orders:
 - a. This cause is hereby reinstated.
 - b. The determination of the prayer for substitution of the Administrator is deferred.
 - c. The Application for confirmation of Grant is disallowed
 - d. The Applicants to file a fresh Application for confirmation of Grant setting out all the Assets of the Estate and beneficiaries, including those who have since died, and their respective shares, together with a consent signed by all the beneficiaries on the proposed mode of distribution within 45 days from the date of this Ruling.



- e. Alongside the said Application referred to in (d) above, the Applicants to file a consent, signed by all the beneficiaries Authorizing them to be Appointed as Administrators of the Estate in place of John Kisangani Sitweti .
- f. This matter to be mentioned on a date to be given at the delivery of this Ruling to confirm compliance with the above orders.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 19TH DAY OF DECEMBER 2023.

S. CHIRCHIR

JUDGE.

