



REPUBLIC OF KENYA



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**In re Estate of Indeché Waswa Wikinza (Deceased) (Succession Cause
569 of 2015) [2022] KEHC 12342 (KLR) (24 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 12342 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 569 OF 2015**

WM MUSYOKA, J

JUNE 24, 2022

**IN THE MATTER OF THE ESTATE OF INDECHE WASWA
WIKINZA ALIAS INDECHE WASWA WIKUNZA (DECEASED)**

RULING

1. I am determining an application, dated December 17, 2021. It is brought at the instance of Agnes Imisah Kulebi, who I shall refer to hereafter as the applicant, and it seeks the setting aside of orders that were made on November 21, 2019, and the transfer of Kakamega CMCSC No 37 of 2017 to the High Court, to be heard alongside the instant cause. The applicant indicates that the respondent, the administrator herein, Jannes Mwavaka Kenyatta, had obtained the orders of November 21, 2019, whose effect was to stay the proceedings in this cause, pending the hearing and determination of Kakamega CMCSC No 37 of 2017. She complains that since then, the administrator has not taken steps to have Kakamega CMCSC No 37 of 2017 fixed for hearing or determined. She asserts that the administrator is using the order of November 21, 2019, to delay the course of justice and to abuse the process of court. She avers that the two causes are related, and Kakamega CMCSC No 37 of 2017 could be heard alongside this cause to save on time.
2. The application is opposed by the administrator. He filed grounds of opposition, on January 25, 2022, dated January 24, 2022. He argues that the application is bad in law, misconceived and an abuse of process; it does not raise triable issues; it is not supported by evidence; it does not meet the requirements of the law under which it is premised; and it is fatally defective.
3. The same came up for hearing before me on January 25, 2022. Mr Shivega for the applicant and Mr Abok for the administrator addressed me on it. I will not recite their arguments, for reasons that will become clear in the preceding paragraphs.
4. The application is largely premised on the pendency of Kakamega CMCSC No 37 of 2017. Am told that the two matters or causes are related, and can be handled and determined simultaneously. However, upon browsing through the file herein, I realized that the file in Kakamega CMCSC No 37 of 2017 is not before me. Without the file in Kakamega CMCSC No 37 of 2017, I cannot tell whether it is related to the instant cause, and whether the two can be handled simultaneously or alongside each



other. It would be premature, therefore, for me, to determine the application without that file in front of me.

5. To facilitate retrieval of that file, I hereby direct that a certified copy of this ruling be made available to the Chief Magistrate and the Deputy Registrar of the High Court, Hon JN Maragia.

6. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 24TH DAY OF JUNE 2022

WM MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Mr. Shivega, instructed by Victor Shivega & Co, Advocates, for the applicant.

Mr. Abok, instructed by Abok Odhiambo & Company, Advocates, for the respondent.

