



REPUBLIC OF KENYA



**In re Estate of Samuel Wamwoma Wabuli (Deceased) (Succession Cause
343 of 2012) [2022] KEHC 11466 (KLR) (29 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11466 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 343 OF 2012
WM MUSYOKA, J
JULY 29, 2022**

RULING

1. In the course of preparing judgment on the summons for confirmation of grant herein, I have established that the instant cause was not initiated by way of a petition for representation, but by way of a summons for revocation of a grant that had been made in Butere PMCSC No. 15 of 2002.
2. The application for revocation of grant was resolved by orders made on 11th December 2012, without a full hearing, where “the grant issued to the petitioner on 4/12/02 and confirmed on 13/1/03” was revoked and a fresh one was to issue. No grant had been issued herein on 4th December 2002 and none was confirmed on 13th January 2003, for this cause only came into being in 2012. No petition was ever filed herein, upon which appointment of administrators could be made or premised, for succession causes are initiated only by way petitions for grants of representation. The order the court made herein on 11th December 2012 did not at all refer to Butere PMCSC No. 15 of 2002, but the grant sought to be revoked had been made in that Butere cause, yet the Butere court file had not been availed to this court, for the purpose of the revocation proceedings.
3. There is something which is not quite right about this matter. There is no petition in this cause, for the cause was initiated for the sole purpose of revocation of the grant made in Butere PMCSC No. 15 of 2002. The petition was filed in Butere PMCSC No. 15 of 2002. The original file in Butere PMCSC No. 15 of 2002 was not called for, and that cause was never consolidated with the instant cause. As there was no petition for appointment of administrators herein, and the file in Butere PMCSC No. 15 of 2002 had not been made a part of these proceedings, there was no legal basis for appointment of administrators in this cause. The Butere PMCSC No. 15 of 2002 cause remained the principal cause, to the extent that that was where the petition to appoint administrators had been filed.
4. In the proceedings that the High Court used to conduct, to revoke grants made by the magistrates courts, before the law changed, through the amendments effected to the *Law of Succession Act*, Cap 160, Laws of Kenya, by the Magistrates Courts Act, No. 26 of 2015, the High Court could only appoint administrators after revoking such a grant, where it had called for the lower court file, and consolidated the lower court’s principal file with the High Court’s secondary file, for what was placed before the



High Court was a mere application for revocation of the grant made in the principal suit before the magistrates courts. Where the lower court file was not called for and was not before the High Court and had not been consolidated with the High Court's revocation file, as at the date the grant was revoked, as in this case, the High Court could only give directions for compliance by the lower court, with respect to appointment of administrators, for the file before it would only be secondary, limited only to revocation of the grant made by the magistrate's court, so that the magistrate's court would remain seized of the main matter. Where the High Court did not have the lower court file before it, there would be no basis for appointing administrators before the principal file, held by the lower court, was availed. A succession cause commenced or originated by way of a revocation application was limited to making orders revoking the grant made by the lower court, but did not extend appointment of administrators, and conduct of subsequent proceedings such as confirmation of grants, unless and until the lower court process had been consolidated with the High Court process.

5. The grant that was made in this cause is hanging. There is no parent or primary file, for there is no petition of any kind before this court, upon which administrators could be appointed. The appointments of 11th December 2012 were made on a flawed process, which has been carried along through to the present. I do not think I will do justice to this matter by confirming a grant made in such a flawed process. In any case, I wish to give a narrative of what transpired before the grant in Butere PMCSC No. 15 of 2002 was revoked. The proceedings in Butere PMCSC No. 15 of 2002 are critical, for the land sales that were carried out by the protestors and the then administrators, and which are the principal bone of contention here, were founded on the proceedings that were conducted in Butere PMCSC No. 15 of 2002. The said land sales can only draw their legitimacy from those proceedings. I will need to peruse that record before I recite it and rely on it, to rule one way or the other.
6. The justice of the situation, therefore, is that I will call for the records in Butere PMCSC No. 15 of 2002, for consolidation with the instant cause, so as to give some sort of foundation and legitimacy to the instant proceedings. The Deputy Registrar shall call for the court file with regard to that matter. I will only be able to complete writing my judgment thereafter. A date for mention, for compliance, will be allocated. It is so ordered.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 29th DAY OF July 2022

WM MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Mr. Namatsi, instructed by Namatsi & Company, Advocates for the applicant.

Mr. Otsyeno, instructed by EK Owinyi & Company, Advocates for the protestors.

