



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Peter Ishmael Murunga- (Deceased) (Succession Cause
6 of 2017) [2022] KEHC 11568 (KLR) (22 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11568 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
SUCCESSION CAUSE 6 OF 2017
WM MUSYOKA, J
JULY 22, 2022**

RULING

1. This cause relates to the estate of the late Peter Ishmael Murunga.
2. Two causes of action were initiated. The first in time is Kakamega CMCS No. 117 of 2016, which was initiated on October 21, 2016. Letters of administration intestate were made in that cause on December 27, 2017, to Daniel Murunga and Phanice Nyaloya Tsikhungu. A grant was duly issued, dated December 29, 2017. The grant was confirmed on March 26, 2019 and a certificate of confirmation of grant duly issued, dated April 2, 2019. The second cause was filed herein, Kakamega HSCSC No. 6 of 2017, vide a petition lodged herein on May 9, 2017. Letters of administration intestate were made to Phanice Nyaloya Tsikhungu Murunga and Daniel Murunga on September 24, 2020 and a grant was duly issued, dated October 7, 2020.
3. The application I am invited to determine is dated October 27, 2020. It seeks that Kakamega CMCS No.117 of 2016 be transferred to the High Court for consolidation with Kakamega HCSC No. 6 of 2017 and disposal; and for review of orders made in Kakamega CMCS No. 117 of 2016 on April 2, 2019 and various other orders.
4. I did call for the file in Kakamega CMCS No. 117 of 2016, the same was availed and I have perused it. Both causes relate to the estate of the same individual, the late Peter Ishmael Murunga; and Daniel Murunga and Phanice Nyaloya Tsikhungu hold grants of administration from both causes. I wonder how this escaped the attention of the Principal Registrar. Anyhow, it is not permissible for there to be two succession causes in relation to the estate of the same person. That presents the spectra of conflicting of orders being made, to the embarrassment of the judicial system. Consolidation of the two causes or the closure of one of them should be an automatic course of action.
5. The cause in Kakamega CMCS No. 117 of 2016 was initiated first. Kakamega HCSC No. 6 of 2017 was initiated during the pendency of Kakamega CMCS No. 117 of 2016 and there is a sense, therefore, that Kakamega HCSC No. 6 of 2017 was filed in abuse of court process. Kakamega CMCS No. 117 of 2016 has also fairly progressed. The grant there has been confirmed, while that in Kakamega HCSC No. 6 of 2017 it is yet to be confirmed. I am told that the Chief Magistrate's court has no



pecuniary jurisdiction over the matter, yet there is no evidence to show that the value of the assets exceeds the pecuniary jurisdiction of the said court. It is not enough to just allege, an effort should be made to demonstrate what is alleged. Copies of valuation reports should have been exhibited. Am invited to review orders made in Kakamega CMCSC NO. 117 of 2016. I believe the court which made the orders is best placed to review them, and address all the other issues raised.

6. The orders that I make are as follows;
 - a. That I hereby consolidate Kakamega CMCSC No. 117 of 2016 with Kakamega HCSC No. 6 of 2017;
 - b. That Kakamega CMCSC No. 117 of 2016 shall be the lead file and
 - c. That the consolidated file shall be returned to the Kakamega Chief Magistrate's Court for determination of the rest of the prayers in the application dated 27th October 2017.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 22ND DAY OF JULY, 2022

W. MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant

Ms. Luseno, instructed by Osango & company, Advocates for the applicant

Ms. Wilunda, instructed by E.A Wilunda & Company, Advocates for the Respondent.

Mr. Mukaya, Advocate for the interested party.

