



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Estate of Joseph Shurake Ole Sindakara alias Joseph Shorake Ntilai - (Deceased) (Succession Cause 640 of 1988) [2022] KEHC 13178 (KLR) (Family) (28 September 2022) (Ruling)

Neutral citation: [2022] KEHC 13178 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 640 OF 1988
AO MUCHELULE, J
SEPTEMBER 28, 2022

BETWEEN

PHILIP MUNKE SHURAKE 1ST ADMINISTRATOR

GEOFFREY OIMERUNDILAI 2ND ADMINISTRATOR

AND

DAVID NCHAPAI OLE NDILAI OBJECTOR

RULING

1. The deceased Joseph Shurake Ole Sindakara alias Joseph Shorake Ole Ntilai died intestate on March 23, 1986 at the Nazareth Hospital in Kiambu. His estate comprised LR No Ngong/Ngong/220 and LR No Kajiado/Ewuaso-Kedong/15. His family comprised his widow Seein Ene Shurake and the following children:-
 - a. Isaack Tajeu Shurake;
 - b. Peter Kilukei Ndilai;
 - c. David Nchapai Ole Ndilai (the objector);
 - d. Timothy Taronkei Shurake;
 - e. Felista Kukuya Shurake (1st administrator); and
 - f. Geoffrey Oimeru Shurake (2nd administrator).
2. The grant of letters of administration was issued to the widow and Isaack Tajeu Shukare on September 2, 1989, and confirmed on March 17, 1989. The estate was distributed to the beneficiaries. The objector has no problem with the grant or certificate of confirmation. His application dated May 3,



2021 attacks the rectification of the grant that was issued the present administrators Philip Munke Shurake and Geoffrey Oimeru Ndilai on May 20, 2019. The rectification had been applied for by these administrators on May 20, 2019 seeking to replace the earlier administrators who had passed on. The objector seeks the revocation of the rectified grant and all consequential orders. His case was that the proceedings leading to the rectification were substantially defective because this was done without reference to him and to the other beneficiaries. It is important to point out that his application did not indicate he was complaining on behalf of himself and the other beneficiaries. It was a personal application. Secondly, he complained that the rectified grant was obtained on the basis of fake statements, non-disclosure and concealment from the court of material facts, and in his exclusion and therefore he has been disinherited.

3. Following the rectification of the grant, the administrators have sub-divided Kajiado/Ewuaso-Kedong/15 into parcels 3935, 3936, 3937, 3938, 3939, 3940, 3941 and 3942. The application sought the inhibition of these titles. It is material to point out that in the affidavit that the objector swore on May 3, 2021 to support the application, he did not state that he had any claim to Kajiado/Ewuaso-Kedong/15, or any of its sub-divisions. I say this because, in the certificate of confirmation Kajiado/Ewuaso-Kedong/15 was reserved for the two administrators. In the supplementary affidavit that had been sworn by Isaac Tajeu Shurake on December 16, 1988 to support the application for confirmation, it had been explained that the objector would get not less than 200 acres from Ewuaso Group Ranch that was then under demarcation.
4. There is the application dated January 18, 2022 by the two administrators against the objector in which they sought the setting aside of the order issued on December 16, 2021 to preserve the estate of the deceased pending the hearing and conclusion of the objector's application. The administrators further sought the dismissal of the objector's application to revoke the rectified grant. Both in the replying affidavit sworn to oppose the objector's application and in the affidavit sworn to support the application, the administrators' case was that the objector had not questioned the way the estate had been distributed in the certificate of confirmation and therefore had no claim to Kajiado/Ewuaso-Kedong/15, or its sub-divisions. Secondly, that the application for rectification had received the consent of all beneficiaries, including the objector.
5. Regarding the issue of his having provided consent to the application to rectify the grant to have the administrators replace the earlier ones, and which consent dated December 30, 2018 was annexed by the administrators, the objector deponed as follows:-

“ 12. That consent to making of rectification of the grant of letters of administration to person of equal or lesser priority if any, is defective and a forgery and did not append my signature or thumbprint on the said summons for rectification of grant of the letters of administration”.
6. It would be a serious thing for the objector to casually allege that his signature on the application dated December 30, 2018 was a forgery. In his application he did not make a specific reference to this consent. One would have expected him, if he was serious, to complain to the police that his signature had been forged. Forgery is a criminal offence. He did not appear to have considered the police to investigate the matter. I find that he knew about the application for rectification and consented to allow the administrators, his brothers, to proceed with the administration of the estate through the rectified grant.
7. In the written submissions by the counsel for the objector, the objector questioned the jurisdiction of the court to rectify the grant. Pointing to section 76(e) and 81 of the *Law of Succession Act*, it was submitted that, where both administrators had died, the court ought to have revoked the grant instead of allowing the application for rectification through substitution. It was submitted that substitution of



deceased administrators was not known to law. The decision *[In the Matter of Estate of Edward Kanyiri Kunyiba \(Deceased\)](#)* [2013]eKLR and *In the Matter of the Estate of Hannah Njuki(Deceased)* NBI HC Succession Cause No 463 of 1997.

8. Unfortunately, this court cannot sit in judgment over the decision of a court of concurrent jurisdiction that allowed the application for rectification. If the objector was aggrieved by the decision, he ought to have appealed it to the Court of Appeal.
9. I hope I have said enough to find, which I do, that the application dated May 3, 2021 has no merits and is dismissed with costs, and that the application dated January 18, 2022 has merits and is allowed with costs.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF SEPTEMBER 2022.

A.O. MUCHELULE

JUDGE

