



**In re Estate of Imbiakha Muka (Deceased) (Succession Cause
616 of 2015) [2022] KEHC 13420 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13420 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 616 OF 2015
WM MUSYOKA, J
SEPTEMBER 23, 2022**

IN THE MATTER OF THE ESTATE OF IMBIAKHA MUKA (DECEASED)

RULING

1. The court file herein is not complete. Indeed, it is not the original file. It is a reconstructed file, based on orders made herein on 17th October 2019, on an application dated 16th October 2019.
2. I do not think the parties in this matter have done justice to it. I think they have been less than candid with the court. They have misled the court, with the consequence that the court has conducted confirmation proceedings that it ought not have conducted, as the grant on record has already been confirmed.
3. On 28th September 2020, Mr. Manyoni, Advocate for the administrator, complained that the pendency of applications dated 2nd July 2019, 2nd December 2019 and 17th March 2020, was making it difficult for the administrator to have his grant confirmed, and submitted that the issues raised in those applications could be addressed at confirmation of grant. Mr. Manyoni and his counterpart for the other side, Mr. K'Ombwayo, agreed to have the said applications withdrawn, to pave way for confirmation. I subsequently made an order in those terms, and directed the administrator to file the confirmation application in 21 days.
4. Mr. Manyoni then went on to tell me that rather than direct the filing of the summons for confirmation, I should direct the hearing of the summons for confirmation of grant that was already pending, purportedly dated 21st September 2016. He also asked me to mark the summons for revocation of grant, dated 14th March 2017, as withdrawn to facilitate disposal of the application dated 21st September 2016. Mr. K'Ombwayo was agreeable to that, and I marked the application dated 21st February 2017 as withdrawn, and allocated that of 14th March 2017 a date for hearing, with directions for filing of protests by the parties opposed to the distribution proposed.
5. The oral hearing of the application dated 21st September 2016 happened on 23rd November 2021. Richard Muka Imbiakha, Enock Murwa Mmasi, Japhether Mbakaya Imbiakha, Cyrus Barasa Wanjala



and Isaac Kulejo Indeché testified. The parties thereafter closed their cases, and the matter was marked for mention for written submissions. Thereafter I allocated the matter a date for judgment.

6. What the parties did not disclose to me, when they addressed me on 28th September 2020, was that the application dated 21st September 2016 was no longer pending, as it had been disposed of on 7th December 2016. These are facts that were well within their knowledge, as the applications that they were asking me to mark as withdrawn, to make way for that dated 21st September 2016, were explicit that the grant herein had been confirmed on 7th December 2016. The Advocates on record, therefore, misled the court. Surely, they were not faithful to their oaths of office. They are officers of the court, who are expected to assist the court, not misguide it. That was a blatant breach of duty by Advocates.
7. One of the applications that I was asked to mark as withdrawn is that dated 14th March 2017. It sought that the grant made to Japhether Mbakaha Imbiakha, on 7th December 2016, and confirmed on 7th December 2016, be recalled and revoked or rectified. The other application is dated 16th October 2019 and it sought reconstruction of the court file, and issuance of a certificate of confirmation of grant. A certificate of confirmation of grant could not issue if the grant made not yet been confirmed. There is also a copy of a ruling in the file, by Njagi J., dated 20th March 2019, on an application dated 6th June 2018. What is of importance to me, for the purpose of that this ruling, is not the orders that Njagi J. made, but the confirmation, at paragraph 1 of the ruling, that the grant herein had been confirmed on 7th December 2016.
8. For avoidance of doubt, this is what Njagi J. wrote at paragraph 1 of the ruling:

“On the 7th December 2016, this court confirmed the distribution of the estate of the deceased herein LR Kakamega/Malava/1540 as follows:

 - a. Richard Muka Imbiakha (the respondent herein) 2.7 acres
 - b. Japhether mbakaya Imbiakha (the petitioner) 2.7 acres
 - c. Isaaya Kulecho Indeché Nil
 - d. Jesca Nafula Mikobi Nil
 - e. Jacob Wafula Were (the interested party) 1.25 acres”
9. The summons for revocation of grant dated 14th March 2017, was filed by parties who were unhappy with the confirmation orders of 7th December 2016.
10. So if the grant herein was confirmed on 7th December 2016, it cannot be available for confirmation for a second time. The application I am invited to determine, for confirmation of grant, is dated 21st September 2016. It predated the confirmation orders of 7th December 2016, suggesting that the said orders were founded on it, and, if not, the orders of 7th December 2016 rendered it otiose, spent. It cannot be pending, as there is no grant available for confirmation in view of the orders of 7th December 2016. I have not come across any orders revoking or setting aside the orders of 7th December 2016.
11. The conclusion to draw, then, is that the proceedings that have been conducted in this matter, since 28th September 2020, were needless, futile and a waste of judicial time. There was no grant to be confirmed. What the administrators should have done should have been to get a certificate of confirmation of grant to be issued in terms of the orders of 7th December 2016, and disposal of the summons for revocation of grant dated 14th March 2017.
12. The way forward, to have this matter handled properly, will be to order as follows: -



- a. That I hereby direct the Deputy Registrar to issue to the administrators a certificate of confirmation of grant in terms of paragraph 1 of the ruling of Njagi J of 20th March 2019;
- b. That I hereby reinstate the summons for revocation of grant dated 14th March 2017, let the same be determined on its merits;
- c. That I shall allocate a date, at the delivery of this ruling, for mention of the summons dated 14th March 2017 for directions; and
- d. That each party shall bear their own costs.

13. It is so ordered.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 23RD
DAY OF SEPTEMBER 2022**

W MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Mr. Manyoni, instructed by Momanyi Manyoni & Company, Advocates for the administrators.

Mr. K'Ombwoyo, instructed by Mr. Kiveu, Advocate for Jacob Wanjala Were

