



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Caleb Oluchina Opuka (Deceased) (Succession Cause
899 of 2011) [2022] KEHC 13441 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13441 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 899 OF 2011
WM MUSYOKA, J
SEPTEMBER 23, 2022**

RULING

1. On July 2, 2021, I delivered a ruling in which I postponed determination of the summons for confirmation of grant, to allow the administratrices to clarify or confirm certain issues relating to the estate. I directed that they file a further or further affidavits on Isukha/Lubao/2347, 2348 and South Kabras/Chesero/3009.
2. Jane Opuka swore an affidavit on September 6, 2021. She avers that Isukha/Lubao/2347 is registered in the name of the deceased, as per certificate of official search and green card attached. She further avers that Isukha/Lubao/2348 was registered in the name of Amina Sagina Abdallah as per a certificate of official search and green card attached. She states that Isukha/Lubao/2349 is registered in the name of the deceased, according to attached copies of official search certificate and green card, and so is South Kabras/Shamberere/3654. Regarding South Kabras/Chesero/3009, she avers that the same was registered in the names of Filisi Owendi Ombima, Phoebe Ongachi and Denis Buluku. She avers that that registration was done secretly, and Filisi Owendi had misrepresented that her daughter-in-law and grandson were minors, and, in a design to deny the two inheritance over Isukha/Lubao/2347, on the guise that the deceased had provided for them.
3. Filisi Owendi Ombima swore a further affidavit on September 30, 2021. She avers that Isukha/Lubao/2347 was registered in the name of the deceased, according to a certificate of official search attached, dated August 12, 2021. The registration is effective from June 2, 2004. Regarding Isukha/Lubao/2348, the same is registered in the name of Amina Sagina Abdalla, according to a certificate of official search attached, dated August 12, 2021. The registration is effective from August 21, 2007. She avers that South Kabras/Chesero/3009 was registered in the names of herself, Phoebe Ongachi and Dennis Buluku, according to certificate of official search, dated August 12, 2021, effective from September 5, 2013. She explains that the latter registration ought to have reflected that she was to hold the property in trust for Dennis Buluku and Phoebe Ongachi, as the 2 had refused to sign documents to have the same transferred to their names, hence she was to be registered in trust for them, to safeguard their interests. She further avers there were orders, made by consent, in Kakamega CMCCC No 160 of 2017, on May 11, 2017, where she was to sign documents transferring the said property to Dennis



Buluku. She avers that she signed the relevant transfer documents, and she no longer had any claims to the said property, as it belonged to Dennis Buluku and Phoebe Ongachi, who was since died.

4. Before I may final orders, I wish to have sight of and peruse the file in Kakamega CMCCC No 160 of 2017, so that I can acquaint myself with the issues in controversy there, and to understand the background behind South Kabras/Chesero/3009. In view of the sentiments expressed in the affidavit of Jane Opuka, I will allow the parties leave to file skeletal submissions on distribution, in view of those affidavits filed. The deputy registrar shall call for the file in Kakamega CMCCC No 160 of 2017, and the matter shall be mentioned for compliance and allocation of a date for ruling. It is so ordered.

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

WM MUSYOKA

JUDGE

Erick Zalo, Court Assistant.

Ms. Rauto, instructed by Rauto & Company, Advocates for the administrators.

Mr. Seneti, instructed by Seneti & Oburu, Advocates for the protestors.

