



**In re Estate of Indeché Waswa Wikinza alias Indeché Waswa Wikunza (Deceased)  
(Succession Cause 569 of 2015) [2022] KEHC 14016 (KLR) (21 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14016 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 569 OF 2015  
WM MUSYOKA, J  
OCTOBER 21, 2022**

**RULING**

1. I am determining an application dated December 17, 2021. It is brought at the instance of Agnes Imisah Kulebi, who I shall refer to hereafter as the applicant, and it seeks the setting aside of orders that were made on November 21, 2019, and the transfer of Kakamega CMCSC No 37 of 2017 to the High Court, to be heard alongside the instant cause. The applicant indicates that the respondent, the administrator herein, Jannes Mwavaka Kenyatta, had obtained the orders of November 21, 2019, whose effect was to stay the proceedings in this cause, pending the hearing and determination of Kakamega CMCSC No 37 of 2017. She complains that since then, the administrator has not taken steps to have Kakamega CMCSC No 37 of 2017 fixed for hearing or determined. She asserts that the administrator is using the order of November 21, 2019, to delay the course of justice and to abuse the process of court. She avers that the two causes are related, and Kakamega CMCSC No 37 of 2017 could be heard alongside this cause to save on time.
2. The application is opposed by the administrator. He filed grounds of opposition, on January 25, 2022, dated January 24, 2022. He argues that the application was bad in law, misconceived and an abuse of process; it did not raise triable issues; it was not supported by evidence; it did not meet the requirements of the law under which it was premised; and it was fatally defective.
3. The same came up for hearing before me on January 25, 2022. Mr Shivega for the applicant and Mr Abok for the administrator addressed me on it. Mr Abok submitted that Kakamega CMCSC No 37 of 2017 was still pending at the lower court, and it could not be transferred to the High Court before it was determined at the lower court, for doing so would amount to interfering with the hierarchy of the courts. He stated that the applicant ought to fix that cause for hearing or dismissal. On his part, Mr Shivega submitted that the cause in Kakamega CMCSC No 37 of 2017 was for issuance of a grant limited ad litem, and that that cause had been stayed by this court in orders that were made on November 21, 2019, at the instance of the administrator herein. He stated that the said orders had not been acted upon. He accused his colleague of using those orders to stall the process herein. He said that it was the duty of the administrator in that cause to move the matter forward.



4. The file in Kakamega CMCS No 37 of 2017 has been availed. I have perused it. It is a matter in the estate of Alfayo Kulabi alias Kulabi Wikunza, deceased, who had died on March 15, 1984. It was initiated by Agnes Imisah Kulebi, on October 3, 2017, by way of a petition, dated October 3, 2017, for grant of letters of administration ad litem limited to filing suit and without power to distribute the estate. A limited grant ad litem, under section 54 and the 5<sup>th</sup> schedule, was made to Agnes Imisah Kulebi, on October 16, 2017. A summons for revocation of that grant, dated February 20, 2019, was then lodged in that cause on February 25, 2019, by Jannes Mwavaka Kenyatta. That summons is still pending.
5. I am invited to revisit my order of November 21, 2019, where I had directed that the cause in Kakamega CMCS No 37 of 2017, with respect to the summons for revocation of grant, be disposed of first, so as to unlock the impasse in the instant cause, after which the application dated November 9, 2018 was to be canvassed. I directed that the file in Kakamega CMCS No 37 of 2017 be placed before the Chief Magistrate (CM) for finalization. After my orders of November 21, 2019, the matter was mentioned before Hon B Ochieng CM, in the presence of the Advocates for both sides. It was allocated a date for hearing on December 18, 2019. On December 18, 2019, the matter was adjourned, at the behest of the Advocate who was holding brief for Mr Abok, on grounds that there was a related matter coming up in March 2020, and it was stood over March 4, 2020. On March 4, 2020, apparently the court did not sit, and the matter was allocated a date, at the registry, for mention on May 27, 2020. Nothing happened on May 27, 2020. On August 5, 2020, the matter was placed before Hon. Ochieng, CM, who allocated it August 19, 2020 as the date for hearing. That was the last action in the file.
6. The chronology of events that I have narrated above leads me to agree with the submission by Mr Shivega, that the order of November 21, 2019 is being used to delay the disposal of pending business in this cause. The revocation application in Kakamega CMCS No 37 of 2017 was at the instance of the party that is represented by Mr Abok. Mr Shivega's client holds the limited grant issued in Kakamega CMCS No 37 of 2017, which Mr Abok's client is seeking to have revoked. The matter in Kakamega CMCS No 37 of 2017 stalled on August 5, 2020. The blame can only lie with Mr Abok. The application pending in Kakamega CMCS No 37 of 2017 is his client's, it should be his duty to take steps to dispose of it. It may be surmised that he is taking advantage of its pendency, and the order that he obtained here on November 21, 2019, to stall these proceedings.
7. Should I cause the said revocation application, in Kakamega CMCS No 37 of 2017, to be heard in these proceedings? I do not think I should. The deceased person in Kakamega CMCS No 37 of 2017 is Alfayo Kulabi alias Kulabi Wikunza, deceased, who had died on March 15, 1984, at Mahiakalo, aged 60 years; while the deceased person in respect of the instant cause is Indeche Waswa Wikinza alias Indeche Wasua Wikunza, who had died on May 23, 2008, at Mahiakalo, aged 72 years. The two causes relate to estates of two different individuals, and one is for a limited grant, while the other is for full administration. I do not see the utility of having the two files brought together. They should be handled separately. I equally do not see the necessity of the order made on November 21, 2019 remaining in force, as there is no appetite, on the part of the applicant, in the revocation application in Kakamega CMCS No 37 of 2017, to prosecute it. That order ought to be vacated, and the applicant, in the application herein, dated November 9, 2018, allowed to prosecute his application, to its logical conclusion, subject, of course, to any other orders that I may make herebelow. The file in Kakamega CMCS No 37 of 2017 shall be returned to the CM's court registry.
8. The other file is Kakamega HCSC No 890 of 2012. It relates to the estate of Indeche Waswa Wikunza alias Indeche Ivasha, deceased, who died on May 23, 2008, at Mahiakalo, aged 76 years. There is no doubt that the said cause relates to the estate of the same person as the deceased herein. However, the cause herein was initiated by Jannes Mwavaka Kenyatta, in his capacity as grandson, he listed



himself as the sole survivor, and representation was granted to him on June 23, 2016. The property the subject of the instant cause is Kakamega/Lubao/700. That grant was confirmed on April 10, 2017, and Kakamega/Lubao/700 was devolved upon Jannes Mwavaka Kenyatta. The cause in Kakamega HCSC No 890 of 2012 was initiated by Joash Limanya Ivasha Indache, in his capacity as son of the deceased. He identified himself and Patrick Moi Indache, both sons, as the sole survivors. A grant was made to him on August 27, 2013, and the same was confirmed on March 5, 2014, distributing the sole asset, Isukha/Lubao/2521, between himself, Patrick Moi Indache and Lijodi Dunston Gundu. There is a pending application, dated July 24, 2014

9. There is sufficient material to demonstrate that the causes in Kakamega HCSC No 890 of 2012 and the instant cause, Kakamega HCSC No 569 of 2015, relate to the estate of the same person. It is unacceptable and impermissible for two separate grants to be issued in respect of the same individual deceased person. There should be only one succession cause initiated in respect of the estate of one intestate, and one grant of letters of administration intestate issued in respect of such intestate estate. See *In Re Estate of Muturi Gatuku (Deceased)* [2014] eKLR (Musyoka, J) and *In re Estate of Josephat Gatia Muchiri (Deceased)* [2018] eKLR (Musyoka, J). Where it transpires that several causes have been initiated over the estate of the same individual dead person, as part of case management, the several causes ought to be brought together, and consolidated (see *Rose Faith Mwawasi & another vs. Fatuma Athman Abud Faraj* [2015] eKLR (Thande, J)) and a single grant issued out of the consolidated cause (see *In re Estate of Margaret Nduta Maina (Deceased)* [2015] eKLR (Muigai, J)), or the extra cause or causes struck out (see *In re Estate of Luduska Hornik Platto (Deceased)* [2012] eKLR (GBM Kariuki, J)), or closed (see *In re Estate of Kariuki Gachenga (Deceased)* [2018] eKLR (Musyoka, J)). It was said, in *In re Estate of David Chege Jasan (Deceased)* [2019] eKLR (Muchelule, J), that it is not lawful that in respect of one deceased person the beneficiaries should litigate over his estate in two different courts, in two different succession causes, and that such should be considered to be abuse of process of the court, and one of the causes ought to be dismissed. In *Jeremiah Mukangu Gioche vs. Samuel Kanyoro Ikua & 3 others* [2020] eKLR (Kimondo, J), it was stated that the Law of Succession Act would never countenance a situation where two different parties hold two separate grants to the same estate. See also *In re Estate of the late Peter Muraya Chege (Deceased)* [2019] eKLR (Ndung'u, J).
10. The other two files that were called for are Kakamega HCSC No 218 of 2006 and Butere PMCSC No 167 of 2018, relating to the intestate estates of Caleb Sammy Ashimosi, deceased, and James Atsulu Okwomi, deceased, respectively. These two causes are not related to the estate of Indache Waswa Wikinza alias Indache Waswa Wikunza, deceased. The issue of their consolidation with Kakamega HCSC No 890 of 2012 and Kakamega HCSC No 569 of 2015 should not arise, and they should be separated from the instant file, and returned to the registries from where they were retrieved.
11. In the end, the orders or directions that I am commended to make in the circumstances are as follows:
  - a. That the order made herein, on November 21, 2019, is hereby vacated, and the Deputy Registrar is directed to cause the court file in Kakamega CMCSC No 37 of 2017 to be returned to the Kakamega CM's court registry;
  - b. That the causes in Kakamega HCSC No 890 of 2012 and Kakamega HCSC No 569 of 2015 are hereby consolidated, with the lead file being Kakamega HCSC No 890 of 2012;
  - c. That the grants of letters of administration intestate in both files are hereby revoked, and a fresh grant shall issue out of the consolidated file in Kakamega HCSC No 890 of 2012, and shall be made to such persons as the parties shall agree upon or the court shall appoint;



- d. That the orders made in both causes, confirming the grants on record, now revoked, and purporting to distribute the estate herein, are hereby vacated, and the certificates of confirmation of grant issued in both matters are hereby cancelled;
- e. That the administrators to be appointed under (c), above, shall apply for confirmation of their grant, in a process that shall involve all the persons beneficially interested in the estate of the deceased herein;
- f. That the matter shall be mentioned, for appointment of administrators, and for further directions, on a date to be allocated at the delivery of this ruling;
- g. That the Deputy Registrar shall cause the court files, in Kakamega HCSC No 218 of 2006 to be separated from this file and Butere PMSC No 167 of 2018, to be returned to Butere PM's court, respectively, for further handling;
- h. That the Deputy Registrar shall cause all the parties, in both Kakamega HCSC No 890 of 2012 and Kakamega HCSC No 569 of 2015, to be furnished with certified copies of this ruling; and
  - i. That any party aggrieved, by the orders made hereabove, has leave of twenty-eight days, to move the Court of Appeal, appropriately.

12. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 21<sup>st</sup> DAY OF October 2022**

**WM MUSYOKA**

**JUDGE**

**Mr Erick Zalo, Court Assistant.**

**Mr Shivega, instructed by Victor Shivega & Co, Advocates, for the applicant.**

**Mr Abok, instructed by Abok Odhiambo & Company, Advocates, for the respondent.**

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