



REPUBLIC OF KENYA



In re Estate of Samuel wamwoma Wabuli (Deceased) (Succession Cause 343 of 2012) [2022] KEHC 16903 (KLR) (23 December 2022) (Ruling)

Neutral citation: [2022] KEHC 16903 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 343 OF 2012
WM MUSYOKA, J
DECEMBER 23, 2022**

IN THE MATTER OF THE ESTATE OF SAMUEL WAMWOMA WABULI (DECEASED)

RULING

1. On July 29, 2022, I delivered a ruling herein, where I observed that there was a problem with the way the whole process herein was undertaken, given that the cause herein was initiated by way of an application for revocation of a grant, that had been made in Butere PM CSC No 15 of 2002. It was noted that there was no basis for appointment of administrators in this cause, as the instant cause was exhausted once the revocation application was determined, for there was no petition in this cause upon which appointment of administrators could be made, for the petition had been filed in Butere PM CSC No 15 of 2002, and that Butere file had not been consolidated with the instant file, for orders of appointment of administrators to be legitimately made. The processes that were conducted in this cause, after December 11, 2014, when the grant in Butere PM CSC No 15 of 2002 was revoked, were flawed, for the court could not appoint administrators when it had no petition before it, to found basis for such appointments.
2. In that ruling, I called for the file in Butere PM CSC No 15 of 2002, where the grant, the subject of the revocation orders made herein on December 11, 2014, was made. That file has been availed. I have perused it. The process that preceded the making of the grant in Butere PM CSC No 15 of 2002, and its confirmation, is all in that file, complete with all the original documents. There is a petition, which was the foundation for the making of the grant that was revoked on December 11, 2014. As indicated above, the court herein did not consolidate Butere PM CSC No 15 of 2002 with the instant cause, and made orders for appointment of administrators, when there was no petition in the instant cause. The ideal situation should have been to either call for the file in Butere PM CSC No 15 of 2002, and consolidate it with the instant file, and thereafter make appointments of the administrators; or appoint new administrators, and direct the court seized of Butere PM CSC No 15 of 2002 to issue to them a grant of letters of administration intestate out of the Butere cause.
3. As it is, the grant that was issued out of the High Court cause is useless and inoperative, as it was issued out of a cause where there was no petition for appointment of administrators, for the only cause before the High Court was for revocation of the grant in Butere PM CSC No 15 of 2002. It follows that all the



processes that the High Court conducted thereafter had no solid legal foundation, and are a nullity. The discretion given to the court, by section 76 of the *Law of Succession Act*, cap 160, laws of Kenya, is wide enough to allow it to revoke or annul grants on its own motion, where such grants had since become useless and inoperative. The grant made on December 11, 2014 is hereby annulled, because it was made through a null process. I direct that the court, seized of Butere PMCSC No 15 of 2002, issues the administrators, appointed under the orders of December 11, 2014, with a grant of letters of administration intestate, out of Butere PMCSC No 15 of 2002, who shall thereafter have to file a fresh application for confirmation of their grant as per the said orders.

4. To facilitate compliance with the orders made in paragraph 3, above, I hereby direct the Deputy Registrar to cause the file in Butere PMCSC No 15 of 2002 to be returned to that registry, and let certified copies of this ruling, and that dated July 29, 2022, be made available to the Head of Station, Butere Law Courts, together with a formal order of the orders by this court made on December 11, 2014. The file herein, Kakamega HCSC No 343 of 2012, shall be closed, as it should have been, after the orders of December 11, 2014 were made. It is so ordered.

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

WM MUSYOKA

JUDGE

Mr Erick Zalo, Court Assistant.

Mr Namatsi, instructed by Namatsi & Company, Advocates for the applicant.

Mr. Otsyeno, instructed by EK Owinyi & Company, Advocates for the protestors.

