



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**SUCCESSION CAUSE NO. 760 OF 2010**

**IN THE MATTER OF THE ESTATE OF YONAH ONGWANO OKWOMI (DECEASED)**

**RULING**

1. The application I am called upon to determine is dated 8<sup>th</sup> July 2020. It seeks substitution of Serita Akwabi alias Ongayo Machengo Akwabi by the applicant, Julia Asiko Ombunga, and issuance of a new grant and certificate of confirmation of grant in the names of the applicant and James Okwomi. The affidavit sworn in support of the application by the applicant on 30<sup>th</sup> September 2020, says that the applicant is a beneficiary arising from Serita Akwabi alias Ongayo Machengo Akwabi. It is averred the said Serita Akwabi alias Ongayo Machengo Akwabi had died, and she has attached to the affidavit copy of a certificate of death to support that contention. The substitution sought is founded on that fact of death. The certificate of death in question is in respect of a person known as Ongayo Machengo Akwabi, who is said to have died on 1<sup>st</sup> February 2019.

2. The estate herein is of a person known as Yonah Ongwano Okwomi, who died in on 5<sup>th</sup> May 1970, according to the certificate of death on record. He was survived by a widow, Julia Maloba Yona and children. Representation to the estate was sought and obtained in the cause by the widow and her son, James Okwomi. An objection was raised to the petition by a Serita Ombunga Akwasi, on grounds that she was also a survivor of the deceased, being a widow of a late brother of the deceased who was buried on the estate property, Kisa/Mundeku/1034, and, therefore she was entitled to a share of the estate, presumably the share due to her dead husband. A trial was conducted and a ruling was eventually delivered on 11<sup>th</sup> June 2015, where the court ruled that Serita Ombunga Akwasi was entitled to part of the land, being 0.8 hectare of Kisa/Mundeku/1034. It was ordered that a confirmed certificate of confirmation of grant be issued in those terms.

3. Firstly, after reviewing the entire record before me, the person who was before the court as objector, and who was awarded a share in Kisa/Mundeku/1034 was Serita Ombunga Akwasi from the documents filed on 23<sup>rd</sup> October 2012. The name then changed to Serita Akwabi and Serita Okwomi in the filings of 19<sup>th</sup> November 2012. She is subsequently referred to as Serita Akwabi. Prior to the filing of the application dated 8<sup>th</sup> July 2020, there was no mention of Ongayo Machengo Akwabi. The proceedings herein relate to Serita Akwabi and not Ongayo Machengo Akwabi. The applicant has not made any effort to place material on record which would demonstrate that Serita Akwabi and Ongayo Machengo Akwabi are one and the same person.

4. Secondly, the estate herein was distributed by the court in the ruling that was delivered on 11<sup>th</sup> June 2015, and a certificate of confirmation of grant was generated, dated 13<sup>th</sup> July 2015, curiously not in the estate of the deceased herein, but that of a Yefes Wakhu s/o Mukhula, deceased. As it is the succession proceedings in respect of the estate of Yonah Ongwano Okwomi have terminated. The only thing outstanding should be transmission of the estate of the deceased in terms of the certificate of confirmation of grant. Transmission is a process that is provided for under the Land Registration Act, No. 3 of 2012, and not the Law of Succession Act. That fact alone should be indicative of the fact that the succession process is over and that the parties should now pursue transmission at the lands registry in accordance with land legislation.

5. What the applicant seeks, by the substitution sought, is to have the court conduct succession to the estate of Serita Akwabi within this succession cause, which is in respect of the estate of Yonah Ongwano Okwomi. That is not permissible. What the applicant ought to do is to pursue implementation of the certificate of confirmation of grant, so that the share due to Serita Akwabi passes to her estate. Upon the property being devolved to the said estate, the children of Serita Akwabi should then initiate a succession cause in her estate and thereafter distribute the property amongst themselves. I say so because, from the ruling of 11<sup>th</sup> June 2015, Serita Akwabi was said to have had twenty children. Her property should be distributed amongst the twenty children, or their survivors, in the event that some of them have since died. The applicant in the instant application would like to substitute Serita Akwabi as a beneficiary, which would mean that the share due to Serita Akwabi would devolve upon her, to the exclusion of the other children, nineteen of them. She does not propose that she should hold the property in trust for them, neither has she presented proof that she has obtained letters of administration intestate to the estate of said Serita Akwabi. She has not obtained their consent to have her substitute Serita Akwabi as a beneficiary. The order sought would have drastic consequences if granted. Let the applicant apply for administration of Serita Akwabi's estate for distribution of her share in that cause.

6. The second prayer is for substitution of Serita Akwabi as administratrix. That is something that I can entertain. The applicant merely describes herself as a beneficiary through Serita Akwabi, but she does not say who Serita Akwabi was to her. I note from the judgment that she was her mother. She has not filed consents of her siblings to allow her be appointed as administratrix in the place of her mother. I had directed, on 30<sup>th</sup> September 2020, that she should avail them in court. When the matter came up on 30<sup>th</sup> November 2010, they were not in court. The law relating to appointment of administrators requires that where the person seeking appointment as such has equal right to others, the others ought to consent to her being appointed. I have not seen such consents. I will not grant that prayer until she complies.

7. I am persuaded that here is no merit in the application before me, and I hereby dismiss the same with costs.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 24<sup>th</sup> DAY OF MARCH 2021**

**W. MUSYOKA**

**JUDGE**