



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**SUCCESSION CAUSE NO. 192 OF 2001**

**IN THE MATTER OF THE ESTATE OF OBUYA SHAKA (DECEASED)**

**RULING**

1. The application before me is dated 10<sup>th</sup> March 2020. It is brought at the instance of Loice Lingóndo Lucheveleli, who I shall refer hereto as the applicant. The application essentially seeks rectification of a certificate of confirmation of grant, dated 14<sup>th</sup> October 2013, to have Daniel Musitia Shaka removed and replaced by the applicant.

2. In the affidavit, that she swore in support of the application, she avers that the initial administrator was the said Daniel Musitia Shaka, who was appointed in 2001. The said grant was confirmed in 2013. When the initial administrator died, fresh administrators were appointed in 2019, who were the applicant, Simon Mumia Obuya and Julius Maina Musitia. She says that he was the person who substituted the late administrator, Daniel Musitia Shaka. She proposes that the certificate be rectified with respect to distribution, so that Kakamega/Lukume/803 is shared out, with Loice Lingóndo Lucheveleli getting 2.0 hectares, Simon Mumia Obuya 2.6 hectares and Julius Maina Musitia 2.0 hectares.

3. The proposed rectification was resisted by Reuben Shaka Watita, through an affidavit that he swore on 2<sup>nd</sup> November 2020. I shall refer to him hereafter as the respondent. He describes himself as a beneficiary of the estate. He avers that the application was an attempt to challenge the confirmation orders made in 2013. According to him, Kakamega/Lukume/803 was shared out, so that Daniel Musitia Shaka got 6.5 acres, Simon Mumias Obuya 5 acres and Reuben Shaka Watita 5 acres. He argues that grant of the orders sought would alter the distribution that the court had ordered, and would amount to redistribution of the estate. He avers that there is an effort to disinherit some beneficiaries. He avers that the late Obuya Shaka had two wives, Matasi Obuya and Shikuku Obuya. Matasi was the mother of Simon Mumia and Peter Obuya, while Shikuku was the mother of Namukulu and Bulimo. He avers that he and Julius Maina Musitia represented the family of Daniel Musitia Shaka and Watita Shaka. He accuses Loice Ling'ondo Lucheveleli and Simon Mumia Obuya of causing trouble in the estate. He submits that since the two did not raise issues at the confirmation of grant, they should be contented with the orders the court made at distribution.

4. Directions were given on 2<sup>nd</sup> November 2020, for disposal of the application by way of written submissions. Parties have complied, by filing their respective written submissions, which I gave read through and noted the arguments made.

5. I have read through the record. I have noted that letters of administration intestate were made on 19<sup>th</sup> July 2001, to Daniel Musitia Shaka, and grant was issued, dated 20<sup>th</sup> July 2001. A summons for revocation of that grant was filed herein on 20<sup>th</sup> December 2004, by Simon Omumia Opuya. That application was dismissed in a ruling that was delivered on 29<sup>th</sup> June 2010. A summons for confirmation of grant, dated 26<sup>th</sup> March 2013, was filed, and was determined on 13<sup>th</sup> September 2013, when the estate was distributed so that Daniel Musitia Shaka got 6½ acres, Simon Mumia Obuya 5 acres and Reuben Shaka Watita got 5 acres. A certificate of confirmation of grant, in those terms, was issued, dated 14<sup>th</sup> October 2013, and the Judge signed it on 1<sup>st</sup> November 2013.

6. Daniel Musitia Shaka died on 23<sup>rd</sup> April 2014, and an application dated 18<sup>th</sup> June 2019 was lodged at the registry, seeking his replacement by Julius Maina Musitia. Another application, dated 22<sup>nd</sup> October 2019, was lodged that the registry by Loice Lingóndo Lucheveleli, seeking to have her substitute Daniel Musitia Shaka, as administrator. Both applications were resolved by consent on 14<sup>th</sup> November 2019, when Loice Lingóndo Lucheveleli, Simon Mumia Obuya and Julius Musitia were appointed administrators of the estate, to take the place of Daniel Musitia Shaka. A grant of letters of administration intestate in those terms was issued, dated 27<sup>th</sup> November 2019.

7. The estate herein has been distributed, and the only issue outstanding is transmission of the property to the beneficiaries named in the certificate of confirmation of grant. Distribution was done by the court in 2013, and it is not clear to me why the estate has not been transmitted to date.

8. I do not quite understand what the application before me is about or what the dispute is, as the applicant submits that she does not seek a redistribution of the estate, as averred by the respondent. There is some vagueness about it. The replying affidavit does not help either. When I look through the supporting affidavit, the sense that I get is that the applicant would like to replace the late administrator, in the certificate of confirmation of grant, as a beneficiary, and she would also want the distribution tinkered with. She would like the court to change the distribution in the confirmation certificate and replace it with something else. No reasons have been allocated for that proposed change. The parties ought to present clear coherent cases, so as to help the court fashion orders that would ultimately assist them going forward.

9. Anyhow, the estate herein was distributed by the court in 2013. Let the parties have the estate transmitted in accordance with the relevant land legislation. Rectification is not an avenue for redistribution of an estate. If any of the parties was not happy with the confirmation orders made in 2013, they should have appealed against them. The matter cannot be reopened in the manner proposed by the applicant. Let the transmission happen in the terms of the certificate of confirmation of the grant on record, and if any of the beneficiaries named in that certificate have died, let the survivors of such beneficiary initiate a succession cause in the estate of such deceased beneficiary. What the applicant is attempting to do here is to conduct a succession to the estate of the late Daniel Musitia Shaka, in this cause, in the estate of the late Obuya Shaka. That is unacceptable. There should be no two or more succession proceedings within the succession proceedings of the original owner of the subject property. Let the estate of the late Obuya Shaka devolve to the three individuals named in the certificate of

confirmation, and if any of them is dead, let his survivors apply for representation to his estate, so that they can distribute his estate in his cause, rather than in this cause.

10. In view of everything that I have said so far, the only order I can make is that the certificate of confirmation of grant be amended to reflect the three administrators appointed on 14<sup>th</sup> November 2019, instead of that of the late Daniel Musitia Shaka, as administrators. However, the distribution made on 19<sup>th</sup> September 2013, as reflected in the said certificate, dated 14<sup>th</sup> October 2013, and signed by the Judge on 1<sup>st</sup> November 2013, shall remain intact. The application dated 10<sup>th</sup> March 2013 is disposed of in those terms. Each party shall bear their own costs.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 28<sup>TH</sup> DAY OF MAY 2021**

**W. MUSYOKA**

**JUDGE**