

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 468 OF 1994

IN THE MATTER OF THE ESTATE OF ESAU MANGILA ETABALE (DECEASED)

JUDGMENT

1. On 10th April 2002, Tanui J delivered a judgment herein, where he revoked a grant that had been made to Shikhaya Nganyi, in respect of the estate herein. Shikhaya Nganyi had obtained representation to the estate of his maternal uncle, who died without a spouse nor child. The court found that the deceased had been survived by 2 brothers, who had a prior right to administration over Shikhaya Nganyi, yet he had obtained representation without obtaining their consent. It was also found that he had not listed them as survivors of the deceased. The grant had been confirmed, and the asset, Marama/Shikunga/674, transmitted to the name of Shikhaya Nganyi. Upon revoking his grant, the court directed that the said transmission be revoked, and the property reverted to the name of the deceased.

2. The application that has been placed before me, for determination, is dated 12th July 2011. It is brought at the instance of Shikhaya Nganyi, who I shall hereafter refer to as the applicant. It seeks revocation of a grant made to Harrison Olumasali Ochoi. It is not indicated, on the face of the application, when that grant was made, nor in the affidavit sworn in support.

3. It is not clear from the record whether there ever was a proper service of the application, but I did hear it on 17th March 2021. The applicant gave a Statement on oath and produced a book, which has a record, allegedly, made by the deceased, in Luhya language, without an accompanying translation, and 2 original title deeds in respect of Marama/Shikunga/674 and Marama/Buchenya/734, both in his name, dated 1st March 1995 and 13th February 2002, respectively.

4. I have carefully gone through the record. It is clear that Tanui J, in his ruling of 10th April 2002, after revoking the grant that had been made to the applicant on 30th January 1995, did not appoint fresh administrators, and least of all Harrison Olumasali Ochoi. I have closely perused through the record, and I have not come across any orders appointing new administrators after the revocation of 10th April 2002. As it is there are no new administrators, and there is no grant on record capable of being revoked.

5. Consequently, the application, dated 12th July 2011, is misconceived and not properly grounded. It was filed in abuse of court process, and it is available only for the purpose of being dismissed, and I do hereby dismiss the same. It was not responded to, so there shall be no orders as to costs. The original documents that the applicant had placed on record, as evidence to support his case, shall be returned to him. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 6th DAY OF AUGUST 2021

W. MUSYOKA

JUDGE