

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 623 OF 2014

IN THE MATTER OF THE ESTATE OF ENOS NAMASWA MUYUMBA (DECEASED)

RULING

1. This matter relates to the intestate estate of Enos Namaswa Muyumba, who died on 27th October 1998, according to the certificate of death on record, serial number 074232, dated 20th January 2012. According to a letter, dated 8th August 2012, from the Chief of Shirugu Location, he was survived by 15 sons, being Luka Munyokole Muyumba, Samson Musotsi Muyumba, Shadrack Muyumba Kwitenje, Samuel Muyumba, Yudas Muyumba Ngulushi, Absolom Muyumba Ngulushi, Akamu Mushen Namaswa, Zebedayo Muyumba Namaswa, Nashon Yevusumba Namaswa, Haron Mukhola Namaswa, Clement Ndombi, Alwanda Namaswa, Boniface Livuyi Namaswa, Muyumba Namaswa and Boyi Namaswa. He is said to have died possessed of South Kabras/Samitsi/462.

2. Representation was sought in this cause, vide a petition lodged herein on 1th August 2014, by Luka Munyokole Muyumba and Shadrack Muyumba Khwatenje, in their capacities as brother and son of the deceased, respectively. They expressed the deceased to have been survived by the individuals listed in the Chief's letter, but it turns out that some of those listed in that letter were infact brothers of the deceased, while the rest were his sons. He was also expressed to have died possessed of the assets set out in the same letter. Letters of administration intestate were made to the petitioners on 28th September 2015, and a grant was duly issued, dated 22nd October 2015.

3. A summons for revocation of grant, dated 13th January 2016, was subsequently filed on 2nd February 2016, by Ruth Muchinia Namaswa, the surviving widow of the deceased, complaining that certain individuals had been left out of the process, being herself, her co-widow, Grace Namaswa and her son, Philp Sindani. She also complained that some assets had also been left out. That application was resolved by consent on 5th December 2016, when the grant made on 28th September 2015 was revoked, and Luka Munyokole and Ruth Muchinia Namaswa were appointed administrators. A fresh grant of letters of administration intestate was made to them, dated 25th March 2019. I shall refer to the two hereafter as the administrators.

4. What is for determination is a summons for confirmation of grant, dated 28th October 2019. It is brought at the instance of two administrators. In the said summons for confirmation of grant, they have identified the survivors of the deceased to be 7 sons of the deceased, being Clement Ndombi, Zebedayo Muyumba, Haron Mukhola Namaswa, Seth Muyumba Namaswa, Nashon Yevusumba, William Alwanda Namaswa and Philip Sindani Namaswa. Other individuals are listed as dependants of the deceased. These are Juma Wambete, who is described as a purchaser, Ruth Muchinia Namaswa, who is listed as a widow, and Luka Munyokole Muyumba, Samson Musotsi Muyumba, Shadrack Muyumba Khwatenje, Samuel Muyumba, Yudas Muyumba Ngulushi and Absolom Muyumba, who are described as brothers of the deceased. It is proposed that the 10.8 hectares of South Kabras/Samitsi/462 be distributed or shared out so that the brothers of the deceased take 8.77 hectares thereof, while the widow and sons of the deceased take the balance, shared out at more or less equal proportions, ranging between 0.17 hectare and 0.2 hectare. Plot Number 14 Samitsi Market is proposed to be devolved upon Juma Wambete, who is described as a purchaser. The summons for confirmation of grant was not filed together with a consent to confirmation of grant, in Form 37, which ought to be filed under Rule 40(8) of the Probate and Administration Rules.

5. When the matter came up for hearing on 1st December 2020, it was directed that the application be heard on 15th March 2021, in the presence of the sons and daughters of the deceased. On the said date, those who attended court were Susan Zebedayo wife of Zebedayo Muyumba, Nashon Yevusumba, Haron Mukhola, Clement Ndombi, Alwanda Namaswa, Boniface Livuyi, Muyumba Namaswa, Boyi Namaswa alias Philip Sindani Namaswa, Seth Muyumba, Judith Ayieko and Helen Keya Namaswa. It transpired that the deceased had 3 daughters, 2 of whom were in court. Those in attendance were all in agreement with the proposals made by the administrators. Although a consent in Form 37, duly signed by all, was not filed, a cross section of the survivors attended court and confirmed their concurrence with distribution proposed. I note that the brothers of the deceased take a greater share of the estate. I note too that 2 of the daughters attended court and support the proposals. The co-widow was not in court, and his position was not articulated, but his son was in court, and I shall take it that the fact that he did not protest signifies that members of his house are contented with what was allocated to them.

6. In view of the above, the application for confirmation of grant, dated 28th October 2019, is hereby allowed. The administrators are hereby confirmed as such, and the estate shall be distributed in terms of paragraph 5 of the affidavit sworn on 28th October 2019, by Ruth Muchinia Namaswa. Should any party be aggrieved by the decision herein, there is leave, of twenty-eight (28) days, to file appeal at the Court of Appeal. It is so ordered.

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

W. MUSYOKA

JUDGE