



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE No 524 of 2001

IN THE MATTER OF THE ESTATE OF NDENGU OLUCHINA

MUSA ALIAS NDENGU OLUCHINA (DECEASED)

R U L I N G

1. This Matter comes before the Court by a Summons for confirmation of a grant of letters of Administration. The Applicant is the Administrator of the Estate of the Late Ndengungu Oluchina Musa alias Ndengungu Oluchina who passed away on 24th June 1985. The Summons was filed on 29th July 2020.

2. The Administrator, Scholastick Ndale Naliaka is a litigant in person. In her Affidavit in Support she states that she was granted letters of administration on 15th November 2020. She states that she is the only surviving dependent of the estate and she seeks that the whole of the Land Parcel No **BUNYORE/EBUSIRATSI/179**. In the Petition she filed, she states that she is the daughter-in-law of the Deceased. However, in her Affidavit in Support of her Petition she states there is another dependent called MN who was a minor at the time. Nothing further is said about him.

3. As to the Estate, the Summons and Affidavit refer to only one piece of land. However, In the Letter from the Chief North Bunyore of 25th October 2001 the Chief confirms that the Deceased, at the time of his death, owned two pieces of land; **E/BUNYORE/EBUSIRATSI/179 and E/BUNYORE/EBUSIRATSI/182**. A search was only carried out in relation to the first but not the second. Letters of Administration were granted and then issued on 15th November 2019.

4. When the application for confirmation of the grant first came before the Court, the Administrator informed the Court that “The Deceased had 4 children – 2 sons and 2 daughters – Asachi (Deceased), Eglen Aono (Deceased), Reuben Muhando (Deceased) and Arthur Ndale”. She said she was the widow of Arthur. Noeli Arachi was said to have 9 Children, 7 of whom died. The other two “got lost in Nakuru. One is called Omichele, Olesi. Selpher. Eglen Aono had 7 Children. 4 died. 3 are alive. Damaris, Charles Ohendungo and Joseph Okamo. Reuben Muhando had children.”, Following that explanation the Learned Judge hearing the Matter, Hon Mr Justice Musyoka noted that there were other persons who had not been disclosed. The summons was to be served on all of them. The Matter returned to Court on 31st May 2021 and still there was no list of beneficiaries prepared.

5. In the course of the hearing the Petitioner listed the following:

(1) Scholastick – Administrator/ Arthur’s Widow

Arthur’s Children:

(2) Benjamin Ndengungu Ndale

(3) Christopher Atango

(4) Nora Ndale

Noeli’s Children

(5) Selpha Mandela – said to be the only one surviving

Reuben’s Children

(6) Issak Mutuku

Eglen's Children

(7) Luka who is said to be disabled

(8) Damaris Onguti

(9) Charles Ondongo who is said to be a drug addict

(10) Joseph OKamo

6. From the foregoing, it is clear that the Administrator has failed to identify, list and involve all the potential beneficiaries in the succession process. She has also failed to collect in the Estate as identified by the Chief.

7. In order to decide the best way forward for this Estate it is helpful to bear in mind the scheme of the Law of Succession Act. Section provides guidance on the appropriate choice of administrator. The general guide to preference provides for the following order of preference:

(a) Surviving spouse or spouses, with or without association with of other beneficiaries

(b) Other beneficiaries entitled on intestacy with priority according to their respective beneficial interests as provided by Part V;

(c) The Public Trustee; and

(d) Creditors

8. Once appointed the Administrators must comply with the duties that are set out in Section 83 of the Act they provide:

83. Duties of personal representatives shall have the following duties—
(a) to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;
(b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
(c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
(d) to ascertain and pay, out of the estate of the deceased, all his debts;
(e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

9. On the question of revocation, Section 76 of the Act provides:

76. Revocation or annulment of grant
A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—
(a) that the proceedings to obtain the grant were defective in substance;
(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow;
(ii) to proceed diligently with the administration of the estate; or
(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular;
or

(e) that the grant has become useless and inoperative through subsequent circumstances

10. From the passage of time (19 years from Petition to Grant) followed by the Administrator's inability and/or unwillingness to involve the other beneficiaries means the Court is satisfied that she is unable to manage the task she is presented with. In the circumstances, it is in the interests of all the beneficiaries that the Letters of Administration granted to SCHOLSTICK NDALE NALIKA on 24th October 2019 and issued on 15th November 2019 be and are hereby revoked. In light of the fact that there are vulnerable beneficiaries and possibly minors entitled to the Estate, it is appropriate that the Public Trustee be appointed as Administrator. The Public Trustee be and is hereby appointed as Administrator. The Hon Deputy Registrar of the High Court shall ensure this order is extracted and served upon the Public Trustee without delay, and in any event within 7 days hereof.

11. Further when she appeared in Court it became clear that she was extremely unwell and therefore it was unduly onerous to insist on her fulfilling the role of administratrix.

Order accordingly,

FARAH S. AMIN

JUDGE

**SIGNED AND DATED AND DELIVERED AT THE HIGH COURT IN KAKAMEGA IN
OPEN COURT**

ON THIS THE 19TH DAY OF NOVEMBER 2021

In the Presence of:

Court Assistant: Dennis Wasilwa

Scholastika Ndala (Petitioner)

Noela Ndale (daughter) beneficiary