

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 20 OF 1994

IN THE MATTER OF THE ESTATE OF IKUTWA ASHIUNDU (DECEASED)

RULING

1. There are two applications for determination. One is dated 21st September 2020, while the other is dated 2nd October 2020.
2. The application, dated 21st September 2020, seeks review of an order that was made on 30th January 2020, consolidating two succession causes, being Kakamega HCSC No. 20 of 1994, the instant cause, and Kakamega HCSC No. 450 of 2006. It is argued that the two causes are in respect of estates of two different individuals, Kakamega HCSC No. 20 of 1994 is in respect of the estate of the late Ikutwa Ashiundu, while Kakamega HCSC No. 450 of 2006 is in respect of the estate of the late Joseph Mulama Likono. It is averred that there was an error on the face of the record.
3. The application, dated 2nd October 2020, seeks rendering of accounts by Joyce Isambo Mulama, on grounds that she has been collecting rents from Plot No.19 Khayega, when she did not have authority to do so, since the grant made to her was revoked in 2011. She is also accused of cutting trees on Isukha/Shitochi/3139, which title had been cancelled by the court. It is averred that she should be restrained.
4. In response, Joyce Isambo Mulama avers that her late husband, Joseph Mulama Likono, had inherited Plot No.19 Khayega and Isukha/Shitochi/3139, in Kakamega HCSC No. 20 of 1994, in the matter of the estate of his late father, which cause has been finalized, for the grant was confirmed and the property devolved. She asserts entitlement to Plot No.19 Khayega and Isukha/Shitochi/3139 on that account, and complains that the consolidation order is what has complicated matters.
5. The application, dated 21st September 2020, is fairly straightforward. The two causes relate to estates of two different individuals. It is not permissible that estates of different individuals are handled within one cause, for that is what consolidation means or results in. That is so as each individual has a separate estate, in terms of the assets that comprise the estate and the persons who are beneficially entitled to shares in those assets. It does not matter that the different estates are of spouses or of a parent/child, the estates are of different persons and ought to be handled separately, and therefore, the consolidation ordered on 30th January 2020 was by error, and should be reviewed. It matters not that the estates relate to the same assets, what matters is that an estate relates to a single individual. It a matter in the estate of that person. One grant ought to be made to the estate of one individual, there cannot be one grant in respect of two estates. There can be simultaneous handling of two or more related causes, but consolidation of the causes is something that should not be contemplated. It could be a conceptual absurdity to have estate of different persons consolidated. See *In the Matter of the Estate of James Kiarie Muiruri (Deceased)* Nairobi HCSC No. 2413 of 2003 (Kooome J) and *In the Matter of the Estate of Gitere Kahura (Deceased)* Nairobi HCSC No. 265 of 2009 (Musyoka J).
6. The grant made in Kakamega HCSC No. 20 of 1994 was confirmed on 14th January 1999. A certificate of confirmation of grant was issued on the strength of the said confirmation orders, dated 20th April 2000, according to which the late Joseph Mulama Likono was to get Plot No. 19 Khayega and 2.0 acres out of Kakamega/Shitochi/1276. Lucia Khavetsa Shikoli was to get the other 2.5 acres out of Kakamega/Shitochi/1276. Joseph Mulama Likono, the administrator died and was substituted on 2nd May 2013, but the terms of the distribution, ordered on 14th January 1999, remained intact. According to the certificate of official search on record, the confirmation orders were registered on 18th January 1999, and it would appear that the register for Kakamega/Shitochi/1276 was closed. Kakamega/Shitochi/3139, out of the subdivision of Kakamega/Shitochi/1276, was devolved to the late Joseph Mulama Likono.
7. Following the death of Joseph Mulama Likono, his two wives initiated two separate succession causes, being Kakamega HCSC Nos. 418 and 450 of 2006, which were consolidated on 10th November 2011, and Kakamega HCSC No. 450 of 2011 was made the lead file. The grants made to the two widows in the two causes were revoked, but no fresh grant was made with respect to the consolidated cause. In that cause, Kakamega HCSC No. 450 of 2011, Kakamega/Shitochi/3139 and Plot No. 19 Khayega were listed as the assets that made up the estate. The two were assets had been devolved to the estate of the late Joseph Mulama Likono from Kakamega HCSC No. 20 of 1999.
8. My understanding is that the estate the subject of Kakamega HCSC No. 20 of 1999 was distributed in 1999, and transmission of the assets happened. The applicant, in the application, dated 2nd October 2020, is not a survivor of the late Joseph Mulama Likono. He has no claim whatsoever over that estate. I note that the two assets, that are the subject of the application, dated 2nd October 2020, were devolved to the late husband of Joyce Isambo Mulama, in the distribution that the court approved in 1999 in Kakamega HCSC No. 20 of 1999. The applicant, in the application dated 2nd October 2020, may be the administrator in Kakamega HCSC No. 20 of 1999, but that estate was distributed, and transmission happened, there is nothing outstanding, and there is no basis for him to pursue Joyce Isambo Mulama, with respect to Kakamega/Shitochi/3139 and Plot No. 19 Khayega in Kakamega HCSC No. 20 of 1999, in connection with accounts and user of the two assets. Any disputes, over Kakamega/Shitochi/3139 and Plot No. 19 Khayega, should be confined to Kakamega HCSC No. 450 of 2011, between persons who claim to be survivors of the deceased in that cause.
9. In the end, I shall dispose of the two applications as follows: that the application dated 21st September 2020 is allowed, so that the order made on 30th January 2020 is hereby reviewed, with the result that the two causes are unconsolidated, and shall henceforth be handled separately; and that the application, dated 2nd October 2020, is declared to be unmerited and it is hereby dismissed. Each party shall bear

their own costs, this being a family matter. Any party, aggrieved by these orders, has leave of twenty-eight days, to move the Court of Appeal, appropriately, on appeal.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 20TH DAY OF DECEMBER, 2021

W. MUSYOKA

JUDGE

In the presence of :-

Erick Zalo – Court Assistant

Fabian Bahati Likono