



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**SUCCESSION CAUSE NO. 295 OF 2003**

**IN THE MATTER OF THE ESTATE OF AKHURA KUBAKHA ALIAS AKHUA MUYALE (DECEASED)**

**RULING**

1. On 30<sup>th</sup> April 2020, I delivered a judgment on an application, dated 20<sup>th</sup> November 2018, for appointment of administrators, and confirmation of the grant of the persons to be appointed as such. The previous administrators had been removed from office, on orders made on 23<sup>rd</sup> October 2018, when the revocation application, dated 21<sup>st</sup> November 2016 was not opposed, and was allowed as prayed. In my judgement of 30<sup>th</sup> April 2020, I identified the persons who were beneficially entitled to a share in the estate, appointed fresh administrators, confirmed the fresh grant, and distributed the estate, after I had heard the applicants in the application, 20<sup>th</sup> November 2018, orally.
2. The application, dated 9<sup>th</sup> November 2020, is for review or setting aside of the orders of 30<sup>th</sup> April 2020, on grounds that the applicants were not heard when the application, dated 20<sup>th</sup> November 2018, came up for hearing, and they had not been served with the application, dated 21<sup>st</sup> November 2016. They also argue that Peter Busula Muyale was never a brother of the deceased.
3. I note that the revocation application, dated 21<sup>st</sup> November 2016, which led to the orders of 23<sup>rd</sup> October 2018, and the subsequent orders of 30<sup>th</sup> April 2020, was by Bereneta Ajenya Akhura and Peter Busula Muyale. I note that both Bereneta and Peter were not heard on the application, dated 9<sup>th</sup> November 2020. Am told Peter is dead. No proof has been provided. His successors or heirs were not served. The two had mounted the application, dated 21<sup>st</sup> November 2016, claiming that the applicants herein had obtained representation and had confirmed their grant without involving them. We risk doing the same, and inviting a future application on similar grounds.
4. The applicants say that Peter Busula Muyale was never a brother of the deceased. Well, the letter from the Chief of Ilesi Location, dated 27<sup>th</sup> February 2002, identified him as such, and he was described as such in the petition that was lodged herein on 26<sup>th</sup> June 2003. One would wonder why he was treated as such in those documents if he was not beneficially entitled to a share in the estate. The fact of his mention in those initial documents is the more the reason that the application, dated 9<sup>th</sup> November 2020, ought to be served on him, and in the event he is dead, as alleged, proof be provided of his death, and his heirs or successors be served.
5. I shall, therefore, not determine the application, dated 9<sup>th</sup> November 2020, before proof of death of Peter Busula Muyale is provided, and his survivors served with the application, dated 9<sup>th</sup> November 2020. The matter shall be mentioned, for confirmation that the directions herein have been complied with. The date for mention shall be given at the delivery of this ruling, or it shall be obtained at the registry.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 20<sup>TH</sup> DAY OF DECEMBER, 2021**

**W. MUSYOKA**

**JUDGE**

**In the presence of:-**

**Erick Zalo – Court Assistant**

**Julius Machika**