



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**SUCCESSION CAUSE NO. 329 OF 2014**

**IN THE MATTER OF THE ESTATE OF JOSEPH SHIKANGA KIMWANI *alias* JOSEPH SHIUMA, DECEASED**

**RULING**

1. George Lancaster Lichina, Polycap Shikanga and Isabella Mushilla, to be known hereafter as the applicants, filed a summons, dated 19<sup>th</sup> September 2018, seeking that the grant of letters of administration made to Barbara Mwangale Shiuma and Clement Amwayi Shikanga, to be known hereafter as the administrators, on 18<sup>th</sup> July, 2014 and confirmed on the 4<sup>th</sup> February 2015, be revoked and or annulled, that the names of Peter Lichina, Paul Shikanga and Agartha Busolo Shiuma, all deceased, be replaced by the names of their respective surviving children, and, alternatively, that the confirmed grant be amended to reflect the true shares due to each and every beneficiary.
2. The application is founded on grounds on the face of it, as well as in the facts deposed in the supporting affidavit of the 1<sup>st</sup> applicant, George Lancaster Lichina, sworn on 19<sup>th</sup> September 2018, and which raised the following issues: that he and the other applicants are surviving children of the late Peter Lichina deceased, the late Paul Shikanga and the late Agartha Busolo Shiuma, and, therefore, they are beneficiaries to the estate, and that the administrators did not include them in the proceedings and, they were excluded from benefiting from the estate.
3. The application was duly served upon the administrators, but they failed to file a response thereto, hence the same is unopposed. At the mention on 27<sup>th</sup> October 2020, the advocate for the applicants, Mr. Elung'ata, invited me to grant the orders sought in it as prayed.
4. It had been brought to my attention, when the matter came up on 6<sup>th</sup> May 2019, that there was another cause pending, being Kakamega HCSC No. 881 of 2013 relating to the same estate. I was asked to call for that file so as to make joint directions.
5. I did call for the court file in Kakamega HCSC No. 881 of 2013. The same was made available. It had been transferred to the Kakamega Chief Magistrate's Court and assigned number Kakamega CMCSC No. 895 of 2018. I perused the same. It had been commenced by Clement Amwayi Shikanga, Polycap Shikanga and George Lancaster Lichina, in their capacities as son and grandsons of the deceased. It listed a total of thirteen survivors of the deceased, being a son, daughters, grandsons, granddaughters and a daughter-in-law of the deceased. The assets listed were Kakamega Municipality Block IV/136, Amalemba Estate Plot No. 136 and Plot No. 8 Khayega Market. The cause was publicised in the *Kenya Gazette* issue of 13<sup>th</sup> June 2014, vide Gazette Notice Number 4010. As at the time the order to transfer the suit to the Chief Magistrate's court was being made no grant of letters of administration intestate had been made to the petitioners. It transpires, therefore, that two of the applicants in the revocation application before me, were petitioners in Kakamega HCSC No. 881 of 2013.
6. The instant cause, Kakamega HCSC 329 of 2014, was initiated herein on 29<sup>th</sup> April 2014, by the administrators, Barbara Mwangale Shiuma and Clement Amwayi Shikanga, in respect of the same estate the subject of Kakamega HCSC No. 881 of 2013. Only two survivors are mentioned in the petition herein, being the two administrators. The assets that the deceased died possessed of are the same as those listed in Kakamega HCSC No. 881 of 2013. It transpires that Kakamega HCSC 329 of 2014 was commenced during the pendency of Kakamega HCSC No. 881 of 2013, and that one of the petitioners in Kakamega HCSC No. 329 of 2014, that is to say Clement Amwayi Shikanga, was also a petitioner in Kakamega HCSC No. 881 of 2013. Curiously, the cause herein was gazetted on the same date with Kakamega HCSC No. 881 of 2013, vide Gazette Notice number 4010, in the *Kenya Gazette* Issue Vol. CXVI – No. 72 of 13<sup>th</sup> June 2014. A grant was made in Kakamega HCSC No. 329 of 2014, and confirmed, while the grant in Kakamega HCSC No. 881 of 2013 has not been processed, but the fact that the cause was gazetted would mean that the same can be made at any time. Should that happen, it would mean that the estate of the deceased herein would be subject to two parallel processes of administration, where Clement Amwayi Shikanga would be an administrator in both causes. Clearly, it was dishonest and dishonourable of him to have appended his signature to the papers in Kakamega HCSC No. 329 of 2014 while he knew that his petition, in Kakamega HCSC No. 881 of 2013, was pending gazettement. I now understand why he, and his co-administrator, did not respond to the application to revoke their grant.
7. I do not think that I should say more. The instant cause was founded on dishonesty. From the schedules of survivors in both causes, it is plainly clear that many of the survivors, in Kakamega HCSC No. 881 of 2013, were not disclosed in Kakamega HCSC No. 329 of 2014. What Clement Amwayi Shikanga did is what is known as stealing a march, which he did against his co-petitioners in Kakamega HCSC No. 881 of 2013. He must have had a sinister motive, perhaps of disinherit the survivors listed in Kakamega HCSC No. 881 of 2013, whom he left out in Kakamega HCSC No. 329 of 2014. I am persuaded that the application dated 19<sup>th</sup> September 2018 is merited, and should be allowed.

8. In the end, the application dated 19<sup>th</sup> September 2018, is disposed of in the following terms:

(a) That the causes in Kakamega HCSC No. 881 of 2013 and Kakamega HCSC No. 329 of 2014 are hereby consolidated, and, since the file in Kakamega HCSC No. 881 of 2013 had been removed from the register, upon its transfer to the Chief Magistrate's court, Kakamega HCSC No. 329 of 2014 shall be the lead file;

(b) That the grant of letters of administration intestate, made to Barbara Mwangale Shiuma and Clement Amwayi Shikanga, on 18<sup>th</sup> July 2014, in Kakamega HCSC No. 329 of 2014, is hereby revoked;

(c) That as a consequence of order (b), above, the orders made on 4<sup>th</sup> February 2015, confirming the grant in Kakamega HCSC No. 329 of 2014, are hereby vacated, and the certificate of confirmation of the said grant, dated 13<sup>th</sup> March 2015, is hereby cancelled;

(d) That as a consequence of orders (b) and (c), above, all transactions carried out on the strength of the grant and certificate, referred to above, are hereby annulled, and the land registrar, or any other relevant authority, is hereby directed to give effect to the orders above, by reverting the assets of the estate to the name of the deceased;

(e) That the matter shall be mentioned, on a date to be allocated at the delivery of this ruling or given at the registry, for the purpose of the family of the deceased agreeing on the administrators of the estate;

(f) That up to four administrators of the estate shall be appointed, two to represent the surviving sons and daughters of the deceased, and the other two to represent the families of the sons and daughters of the deceased who have since died;

(g) That the Deputy Registrar shall cause a certified copy of this ruling to be made available to the Chief Magistrate's court registry so that it can cause Kakamega CMCSC No. 895 of 2018 to be removed from their records;

(h) That each party shall bear their own costs; and

(i) That any party aggrieved by these orders is hereby granted leave, of twenty-eight (28) days, to move the Court of Appeal, appropriately.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 18<sup>th</sup> DAY OF December 2020.**

**W MUSYOKA**

**JUDGE**