



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO 712 OF 2012**

**IN THE MATTER OF THE ESTATE OF PRISCAH NYASUGUTA NYANDIGISI (DECEASED)**

**AND**

**SAMSON DICKSON NYANDIGISI.....1<sup>ST</sup> PETITIONER**

**GILBERT NYANDIGISI.....2<sup>ND</sup> PETITIONER**

**RULING**

1. On 17<sup>th</sup> August 2020 this court shelved the ruling on the summons of confirmation of grant dated 3<sup>rd</sup> July 2019 and directed parties to comply with the earlier court orders directing the petitioners to file an affidavit setting out the respective title searches.
2. The 1<sup>st</sup> petitioner having filed his affidavit dated 12<sup>th</sup> October 2020 deposing that LR No. West Mugirango/Bonyatuta/127, Nyansiongo Settlement Scheme/69 and Matutu Settlement Scheme/62 are the deceased's properties. The certificate of search by the land registrar also reveals that indeed the properties were owned by the deceased.
3. I will now proceed to consider the merits of the summons for confirmation of grant dated 3<sup>rd</sup> July 2019. The application is supported by the affidavit of the 1<sup>st</sup> petitioner stating that the beneficiaries have consented that the estate should be shared equally between the deceased sons: Samson Dickson Nyandigisi, Yabesh Nyandigisi, Joshua Nyandigisi, Betwel Nyandigisi, Fredrick Nyandigisi and Gilbert Nyandigisi.
4. The deceased also had two daughters Loyce Nyanchoka Mogaka (deceased) and Isabella Kemuma Nyandigisi. Isabella Nyandigisi in her affidavit dated 3<sup>rd</sup> July 2019 consented to the mode of distribution and further stated that she is not claiming any part of the estate.
5. The petitioner proposed that parcel No LR West Mugirango/Bonyatuta/127 which consists of a tea estate should be transferred to Mogonga Tea Company Limited where all the 6 sons of the deceased are directors. The 1<sup>st</sup> petitioner also seeks to have Nyansiongo Settlement Scheme/69 which was left out of the P&A 5 at the time of filing to be included as part of the deceased estate.
6. Having carefully considered the application, in regards to parcel No LR West Mugirango/Bonyatuta/127, the same cannot be transferred to Mogonga Tea Company Limited for reasons that the company is a body corporate with a separate independent identity in law. The Court of Appeal in the case of **Victor Mabachi & Anor v Nurturn Bates Ltd NRB CA Civil Appeal No. 247 of 2005 [2013] eKLR** held that, "[A company] as a body corporate, is a persona juridica, with a separate independent identity in law, distinct from its shareholders, directors and agents unless there are factors warranting a lifting of the veil."
7. In this regard therefore Mogonga Tea Company Limited is a separate entity and not a dependant as envisioned by the Law of Succession Act. **Section 29** of the **LSA** is set out the meaning of the term 'dependant' as follows:

*For the purposes of this Part, "dependant" means—*

- (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;*
- (b) such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and*
- (c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.*

8. The parties having consented to the mode of distribution in regard to the deceased's estate the grant is hereby confirmed in the following terms:

a) LR No. West Mugirango/Bonyatuta/127, Nyansiongo Settlement Scheme/69 and Matutu Settlement Scheme/62 shall be divided in equal shares among the 6 sons of the deceased.

b) There shall be no orders as to costs.

**Dated, signed and delivered at Kisii this 15<sup>th</sup> day of December, 2020.**

**A. K. NDUNG'U**

**JUDGE**