



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 404 OF 2016

IN THE MATTER OF THE ESTATE OF SAMWEL CHAPIA CHISIRA (DECEASED)

RULING

1. The deceased herein died on 21st August 2000. A letter from the Chief of Marama South Location, dated 12th May 2016, states that he was survived by his only child, a daughter named Linet Oyiera, his wife being also deceased. Representation to his estate was sought in this cause by a petition lodged herein by Linet Oyiera Oguma. She listed herself as the sole survivor and expressed the deceased to have had died possessed of a property known as Marama/Shibembe/503. A grant of letters of administration intestate was issued to her dated 6th September 2016. She filed a summons for confirmation of her grant on 3rd May 2017, of even date, which is yet to be determined.

2. A summons was thereafter filed herein on 24th July 2017 seeking revocation of the grant made herein on 6th September 2016. The summons was filed at the instance of James Aswani Oniango, a purported nephew of the deceased, being an alleged son of the deceased's brother Johnson Matendechere Chapia. It is alleged that Linet Oyiera Oguma was a total stranger to the estate. The administrator has replied to the revocation application asserting that the deceased was her father.

3. When the said application came up for hearing on 9th October 2018 it transpired that there were other succession causes relating to the estate of the deceased, being Butere SRMCSC No. 83 of 2009 and Kakamega HCSC No. 851 of 2011. I gave directions that the other files be made available so that I could give directions on the way forward with regard to the estate. The files in Butere SRMCSC No. 83 of 2009 and Kakamega HCSC No. 851 of 2011 have been availed and placed in the instant file. I have perused through them.

4. The record in Butere SRMCSC No. 83 of 2009 indicates that the same was initiated by Johnson Matendechere Chapia, in his purported capacity as brother of the deceased. The deceased was expressed as having died possessed of a property known as Marama/Shibembe/503. The grant was confirmed vide orders that were made on 13th April 2019. The cause pending in Kakamega HCSC No. 851 of 2011 was initiated by way of a summons in chambers dated 14th November 2011. In it the applicant is the administrator in the instant cause. She seeks revocation of the grant that had been made in Butere SRMCSC No. 83 of 2009. She complained that the administrator in that cause did not disclose that the deceased had been survived by an only child.

5. I note that all these causes relate to the estate of the same individual, Samwel Chisira Chapia. There is no good reason why all three should be handled separately. Ideally, the instant cause ought not have been initiated since at the time of its filing Butere SRMCSC No. 83 of 2009 was pending. What the instant administrator should have done was to pursue her application in Kakamega HCSC No. 851 of 2011 to its logical conclusion so that the court could decide once and for all who the survivors of the deceased were and who was entitled to representation to the deceased's estate.

6. I note too that there are two pending applications for revocation of grants, made in Butere SRMCSC No. 83 of 2009 and in the instant cause Kakamega HCSC No. 404 of 2016. The central issues for determination in both applications, that is to say that in Kakamega HCSC No. 851 of 2011 dated 14th November 2011 and that in Kakamega HCSC No. 404 of 2016 dated 24th July 2017, are who the survivors of the deceased are and who is entitled to be appointed administrator of the estate. The contest is between a person who claims as a child of the deceased and the other who claims through a brother of the deceased.

7. The grant in Butere SRMCSC No. 83 of 2009 has been confirmed, while that in Kakamega HCSC No. 404 of 2016 is yet to be confirmed but there is a pending application for its confirmation. The estate comprises of only one asset, Marama/Shibembe/503. Its value has not been disclosed. I believe that the same does not exceed Kshs. 20, 000, 000.00 and should be within the jurisdiction of the Butere magistrate's court. The Magistrate's Court Act, No. 56 of 2015, extended jurisdiction to revoke grants to the magistrates' courts.

8. The directions that I shall give in respect of the estate of Samwel Chisira Chapia in the circumstances are as follows:

a. That I hereby order consolidation of the causes in Butere SRMCSC No. 83 of 2009, Kakamega HCSC No. 851 of 2011 and Kakamega HCSC No. 404 of 2016;

b. That the lead file shall be Butere SRMCSC No. 83 of 2009;

c. That the grants in Butere SRMCSC No. 83 of 2009 and Kakamega HCSC No. 404 of 2016 are hereby revoked;

d. That the orders made in Butere SRMCSC No. 83 of 2009, confirming the grant therein are hereby vacated;

e. That any transactions and transfers of land relating to Marama/Shibembe/503 are hereby annulled, and the Land registrar responsible for Kakamega County is hereby directed to revert the title to the name of the deceased;

f. That the court file relating to the consolidated cause in Butere SRMCSC No. 83 of 2009 shall forthwith be conveyed to the Principal Magistrate's Court at Butere for determination of the issues that I have mentioned in paragraph 6 here above of this ruling and eventual distribution of the estate; and

g. That costs shall be in the cause.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 28TH DAY OF JUNE, 2019

W MUSYOKA

JUDGE