REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 314 OF 2008

IN THE MATTER OF THE ESTATE OF JOSHUA A. VISAHO alias JOSHUA S. VISAHO (DECEASED)

AND

SUCCESSION CAUSE NO. 224 OF 2009

IN THE MATTER OF THE ESTATE OF TATAYO MATUMA alias TATAYO MUKWANI VISAHO

JUDGMENT

1. The two causes herein were brought together vide orders that were made on 13th June 2012 and 17th July 2012 by Jaden J. in HCSC No. 314 of 2008. On 20th July 2015 Mrima J. made orders consolidating the two causes, and making the cause in HCSC No. 314 of 2008 the lead file. It was not clear at that stage whether the two causes related to the same estate, for, according to the advocates for the petitioner in HCSC No. 314 of 2008, they did, while the advocates for the petitioner in HCSC No. 224 of 2009 took a contrary view, that they did not.

2. Let me start by going through the record in each of the two causes as a prelude to determining the issues in controversy.

3. The cause in HCSC No. 314 of 2008, relates to the estate of a person known as Joshua Shitakwa Visaho. He died on 5th October 1990. Representation to his estate was sought through a petition lodged in the cause on 10th July 2008 by Tatayo Mbisawa Matuma, in his capacity as brother of the deceased. The deceased was expressed to have had been survived by Tatayo Mbisawa Matuma, and to have had died possessed of a property known as Kakamega/Shiakungu/738. It transpired that Tatayo Mbisawa Matuma died on 25th July 2008, before representation could be made to him, whereupon an application, dated 15th August 2008, was brought in the cause by Peter Imbayi Bisaho, to substitute him as petitioner. The said Peter Imbayo Bisaho described himself as a brother and kin of both the deceased in that cause and Tatayo Mbisawa Matuma. Letters of administration intestate were made on 5th May 2009 to Peter Imbayo Bisaho, and a grant was duly issued on 5th June 2009. I shall accordingly refer to him as the administrator in HCSC No. 314 of 2008. His grant was confirmed on 13th October 2010, on an application dated 23rd March 2010. The entire property was devolved wholly upon him. A certificate of confirmation of grant issued in those terms, dated 21st October 2010.

4. The cause in HCSC No. 224 of 2009 relates to the estate of a person known as Tatayo Mbisawa Matuma, who died on 25th July 2008. Representation to his estate was sought in that cause through a petition lodged at the registry on 30th April 2009 by Alice Khamali Shikami, in her purported capacity as a liability of the estate. She listed herself and Peter Imbayi Bisaho as the survivors of the deceased, who allegedly died possessed of a property known as Isukha/Shiakungu/738. Letters of administration intestate were made to her on 15th December 2009, and a grant was issued in her name dated 18th December 2009. I shall hereafter refer to her as the administratrix in HCSC No. 224 of 2009. The grant was confirmed on 10th November 2010, on an application dated 20th August 2010. The estate was devolved upon the administratrix in HCSC No. 224 of 2009 and the administrator in HCSC No. 314 of 2008, in equal shares.

5. Upon the grant in HCSC No. 314 of 2008 being confirmed, an application was lodged in that cause, dated 14th May 2012, by the administratrix in HCSC No. 224 of 2009, seeking principally the consolidation of the two causes on grounds that they related to the same estate and to the same deceased person. The administratrix sought that the confirmation orders in HCSC No. 314 of 2008 be vacated, and that the court determines ownership of the property known as Isukha/Shiakungu/738. Her case was that she had bought the property which made up the estates in both causes from Tatayo Mbisawa Matuma, and upon his demise she obtained representation to his estate, she had her grant confirmed, but when she sought to have the property processed to her name, the administrator in HCSC No. 314 of 2008 placed a caution on the register and thereafter proceeded to have the entire property transferred to his name.

6. The administrator in HCSC No. 314 of 2008 responded to the application through the affidavit he swore on 13th June 2012. He avers that the two deceased persons in both causes were his biological brothers, and contends that the administratrix in HCSC No. 224 of 2009 was not related to him and the deceased persons. He asserts that he was the person entitled to the property of the deceased in HCSC No. 314 of 2008,

as the said deceased held the said property in trust for him. He complains that when the administratrix sought representation in HCSC No. 224 of 2009 she did not cite him yet he was the biological brother of the deceased in that cause. He pleads that the grant in that cause had been obtained through concealment of facts. He says that the administratrix was bent on disinheriting him.

7. Directions were given that the application be disposed of by way of *viva voce* evidence, and that parties file witness statements. There was compliance, as the parties did file witness statements of the persons they proposed to call as their witnesses.

8. The oral hearing commenced on 11th July 2018. The first on the stand was Javan Mwanzi Mukavale, an advocate of this court, practicing as such in Mukavale & Company, Advocates. He testified that he acted as advocate in a sale of land transaction between Tatayo Mbisawa Matuma and the administratrix in HCSC No. 224 of 2009. Tatayo Mbisawa Matuma was selling the property the subject of the two causes to the administratrix in HCSC No. 224 of 2009. He said that he did a search on the property, and established that the seller held half-share thereof, while the other share was held by the deceased in HCSC No. 2008. He stated that Tatayo Mbisawa Matuma had capacity to sell his share of the property to the administratrix in HCSC No. 224 of 2009. The said Tatayo Mbisawa Matuma allegedly signed a transfer document in favour of the administratrix in HCSC No. 224 of 2009, but he unfortunately died before transfer could be effected, hence she initiated the cause in HCSC No. 224 of 2009. He stated that the deceased in HCSC No. 314 of 2008 had disappeared and it was for that reason that he cited the administrator in HCSC No. 314 of 2008. When he failed to respond he chose to initiate HCSC No. 224 of 2009. He case was that she was only interested in the half-share of Tatayo Mbisawa Matuma, the other share could go to the administrator in HCSC No. 314 of 2008, whom she recognized as the brother of the deceased persons in both causes.

9. During cross-examination, he stated that the sale process spanned six months from 9th November 2007 to 22nd May 2008. He said that he was not aware whether consent had been obtained for the purpose of the sale. He said that he was also not aware that the deceased in HCSC No. 314 of 2008 was not alive at the time of the said transaction. The information that had been availed to him was that he had disappeared. He stated that he had cited the administrator in HCSC No. 314 of 2008 although he did not have the citation papers with him in court. At reexamination, he stated that he knew that the parties entered into an agreement, money changed hands and the buyer took possession. He said he was unaware that a validation consent was necessary.

10. He was following in the witness stand by the administratrix in HCSC No. 224 of 2009. She said that she bought the half-share of the deceased in HCSC No. 224 of 2009 in Isukha/Shiakungu/738. She allegedly paid the full purchase price to him before he died. When he died she initiated the cause in HCSC No. 224 of 2009 in an effort to get her share of the land. She said that the other share could go to the administrator in HCSC No. 314 of 2008. She said that she was not aware that the administrator in HCSC No. 314 of 2008 had been registered as the sole proprietor of the whole of Isukha/Shiakungu/738.

11. The administratrix's next witness was Peter Likhodio Litsalwa. He testified that he was related to both deceased persons and the administrator in HCSC No. 314 of 2008. He explained that the three were sons of the same father, the two deceased persons were of the same mother, while the administrator was born of a different mother. He said the mother of the two deceased persons was his sister, adding that none of their other relatives were alive. The two never married. He stated that the deceased in HCSC No. 224 of 2009 had informed him that he was to sell his half-share to the administratrix. He said he could not tell the year the transaction happened, but he said the deceased in HCSC No. 314 of 2008 was alive when that in HCSC No. 224 of 2009 sold his share. He said that the administratrix took possession and farmed the land.

12. At the close of the administratrix's case, the administrator took the stand. He stated that he was not aware that he had bought the land, and that she only came to be aware after when he was served with the court papers in respect of the instant application. He also said he was never served with any citation to obtain representation. He asserted that he was not cited before HCSC No. 224 of 2009 was initiated. He said that he was not aware that she was initiating that cause, adding that he did not himself initiate HCSC No. 314 of 2008 as he merely substituted the deceased in HCSC No. 24 of 2009 as petitioner in HCSC No. 314 of 2008. He then proceeded to raise technical issues on the document the administratrix had put in evidence as proof of the sale. He asserted that he had been in possession of the land since 1995, and that the administratrix had never taken possession. He stated that as the property had dual ownership the consent of the co-owner ought to have had been obtained. He confirmed that he shared the same father with the two deceased persons, but they had different mothers. He said that Isukha/Shiakungu/738 was the land given to the house to which the two deceased persons belonged, while the house to which he belonged had been given a different parcel of land. He confirmed that the entire property had since been registered in his name after confirmation of his grant in this cause before consolidation. He said that the administratrix could get her share of the property if the court found that she had properly acquired it through sale.

13. At the conclusion of the oral hearing, the parties filed written submissions, which I have read through and noted the arguments advanced. Prior to that, Mr. Mukavale, the first witness for the administratrix, filed an affidavit that he had sworn on 29th October 2018, in which he confirmed that no citations were issued for service on the administrator in HCSC No. 314 of 2008.

14. The matter before me raises several issues that I shall address one after the other.

15. The first issue that I will need to determine regards the consolidation of the two causes herein, being HCSC No. 314 of 2008 and HCSC No. 224 of 2009. The administratrix occasioned the same on the basis that the two causes related to the estate of the same individual. It has transpired since that the two causes do not concern the estate of the same person. They relate to the estates of two persons who were blood brothers. The only common thread is that the two deceased persons were the registered proprietors of the property known as Isukha/Shiakungu/738. Even then, their respective shares in that property were distinct or defined for each deceased person was entitled to a half share. It would mean that the property was a tenancy in common and not a joint tenancy.

16. Prudence would require that estates of two different persons should not be consolidated. The cause is personal to the dead individual. It is about the person and not the property. Each should be handled separately but not as one, even where the assets and the beneficiaries are common. It is permissible though, in such cases, where convenient and possible, to have the files put together, not consolidated, and to have the matters disposed of simultaneously or contemporaneously. The only causes that should be consolidated are those initiated in the matter of the estate of the same individual, as they would relate to the same person and the same property. The two causes herein, being of two distinct

individuals, ought not have been consolidated.

17. The second issue is ownership of Isukha/Shiakungu/738 as between the administratrix in HCSC No. 224 of 2009 and the administrator in HCSC No. 314 of 2008, for it has been flagged by the administratrix as one of the issues that I should determine.

18. The administratrix is not a relative of the deceased in HCSC No. 224 of 2009. She is not one of the heirs or survivors, for she was neither his child nor spouse. The only connection between her and the deceased is that she allegedly bought property from him during his lifetime, which property had not been transferred to her name before the demise of the deceased. She does not stake a claim to the estate as an heir, but rather as a creditor. Her claim has not been acknowledged by the closest relative of the deceased, that is to say the administrator in HCSC No. 314 of 2008. Indeed, he has vehemently contested it. She does not have a decree from any court affirming the sale and awarding the property to her. It would appear that that is what she is inviting me to do; to evaluate the documents relating to the alleged transaction between her and the deceased, and declare that she had entered into a valid sale of land transaction, that she had acquired property to that land and consequently she was entitled to it. In short, she is using these probate proceedings to have the court sanction the said transaction and to give it validity.

19. I doubt whether I, sitting as a High Court Judge, have any jurisdiction to determine the validity of the sale transaction between the deceased and the administratrix, and on who, between her and the administrator, was entitled to Isukha/Shiakungu/738. That jurisdiction was taken away by the Constitution 2010 and vested in another court. That comes out clearly from Articles 162(2) and 165(5) of the said Constitution, which provide as follows:

> *"162.*
>
> *(1) …*
>
> *(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—*
>
> *(a) …*
>
> *(b) the environment and the use and occupation of, and title to, land.*
>
> *(3) …*
>
> *163 …*
>
> *164 …*
>
> *165.*
>
> *(1) …*
>
> *(2) …*
>
> *(3) …*
>
> *(4) …*
>
> *(5) The High Court shall not have jurisdiction in respect of matters—*
>
> *(a) …*
>
> *(b) falling within the jurisdiction of the courts contemplated in Article 162 (2).*
>
> *(6) …*
>
> *(7) …"*

20. Parliament did comply with Article 162(2) by enacting the Environment and Land Court Act, No. 19 of 2011, which established the Environment and Land Court, and set out the jurisdiction of that court. The preamble to that Act states that it is to give effect to Article 162(2) of the Constitution, to establish a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to land. The jurisdiction of the court is set out in section 13. The court is conferred with "original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) of the Constitution." The specifics of that jurisdiction are delineated in section 13(2) to include "any other dispute" relating to land.

21. Then there is legislation relating to land. The Land Act, No. 6 of 2012, sets out the various forms of land tenure, which include land that is privately owned. There are provisions in there relating to contracts over land, covering such matters as sale of land and possession of land, and reliefs over such contracts. There are also provisions on transfers. Disputes around these issues would go to a court which is identified in

section 2 of the Act as the Environment and Land Court. The Land Registration Act, No. 3 of 2012, provides for matters surrounding registration of titles to land. It has provisions on dispositions of interests in land, which would include sale of land and the subsequent transfer of land rights and interests. Under section 2 of the said Act, the court to which any dispute relating to such matters should be referred to us the Environment and Land Court.

22. As I have said elsewhere, there was an alleged land sale transaction over Isukha/Shiakungu/738 between the administratrix and the deceased. That sale would no doubt be governed by the provisions of Land Act. Issues as to possession arise. This too is for determination under the provisions of the Land Act. The property had not been transferred by the time the deceased died, which, if it had happened would have put the matter to rest. The administrator challenges that sale of land, and, therefore, the validity of the contract. That is another issue for determination under the provisions of the Land Act. The questions relating to whether the sale of the said land was valid and whether it conferred any rights on the administratrix can only be answered by reference to the Land Act, and any disputes requiring judicial adjudication can only be dealt with by the Environment and Land Court, as that is the court with jurisdiction over those matters as per Article 162(2) of the Constitution, section 13 of the Environment and Land Act and section 2 of the Land Act. In view of this, I have absolutely no jurisdiction to determine ownership of Isukha/Shiakungu/738, and the validity of the contract for sale of land entered into between the administratrix and the deceased person the subject of HCSC No. 224 of 2009.

23. The administratrix's claim to Isukha/Shiakungu/738 can only be honoured or entertained by a probate court if she obtains a decree of a competent court of law, which validates the said sale and awards the land to her. That cannot be done by a probate court seized of succession proceedings. As demonstrated above that falls within the mandate of the Environment and Land Act. The mandate of the probate court is to distribute the assets that form the estate of a deceased person to persons who are beneficially entitled. These would be heirs or survivors or dependants of the deceased persons, and creditors. For creditors to qualify for benefit their claims should either be accepted by the administrators, failing which they would have to prove them before a court of law. That would mean that the administrator would only entertain such claims, if he does not accept them out rightly, upon production of a decree of a court of competent jurisdiction, pronouncing of the rights of the creditor to the property the subject of the claim. In the instant case, the administrator has declined to accept the administratrix's claim, and, therefore, she must prove it before a court, and obtain a decree therefrom before the administrator can accede to it. She has not proved her claim, for she has not produced any decree from a competent court, validating the alleged sale and awarding her the said property.

24. Having settled that issue, the next consideration should be whether she had been properly appointed administratrix to the estate of the deceased in HCSC No. 224 of 2009. As stated elsewhere, it is not disputed that the administratrix in HCSC No. 224 of 2009 is not a blood relative of the deceased. She is neither an heir or dependant or survivor of the deceased. She does not claim as a person entitled in the intestacy of the deceased. Her claim is founded on contract. That then raises questions as to whether her entitlement to administration of the estate of the deceased is superior to that of the survivors of the deceased.

25. So who are the survivors of the deceased herein? One of the witnesses of the administratrix confirmed that the deceased did not have a wife nor children, and therefore he did not have close relatives within the two categories. It meant that the nearest surviving blood relative was the administrator in HCSC No. 314 of 2008, who was described as his half-brother for they shared a common father. Such a person is entitled under the Law of Succession Act, upon the intestacy of the deceased herein, who had no surviving spouse, or surviving children, or surviving parents or siblings, or children of dead siblings, to inherit his estate. That comes out clearly in section 39 of the Law of Succession Act, Cap 160, Laws of Kenya, which states as follows:

> "*39. Where intestate has left no surviving spouse or children*
>
> *(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—*
>
> *(a) father; or if dead*
>
> *(b) mother; or if dead*
>
> *(c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none*
>
> *(d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none*
>
> *(e) ...*
>
> *(2) ..."*

26. Entitlement to administration in intestacy is provided for in section 66 of the Law of Succession Act, which sets out the order of preference in that regard. The blood relatives of a deceased person have a superior entitlement to administration over non-relatives of the deceased, who should include the Public Trustee and creditors. Indeed, creditors lie at the bottom of the pile after the Public Trustee. The provision says as follows:

> "*66. Preference to be given to certain persons to administer where deceased died intestate*
>
> *When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—*

(a) surviving spouse or spouses, with or without association of other beneficiaries;

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

(c) the Public Trustee; and

(d) creditors …"

27. The administrator in HCSC No. 314 of 2008 is a blood relative of the deceased, while the administratrix in HCSC No. 224 of 2009 is a creditor. In terms of ranking, with regard to entitlement to administration of the estate of the deceased in HCSC No. 224 of 2009, the administrator in HCSC No. 314 of 2008 has a superior right to administration over the administratrix.

28. The fact that a person has an inferior right to administration over another does not mean that they cannot apply for and obtain representation. They can, provided that they satisfy the requirements set out in Rule 7(7) of the Probate and Administration Rules. The Rule provides as follows:

"*Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that very person having a prior preference to a grant by virtue of that section has –*

(a) renounced his right generally to apply for a grant; or

(b) consented in writing to the making of the grant to the applicant; or

(c) been issued with a citation calling upon him either to renounce such right or to apply for a grant."

29. The administratrix is no doubt one of the persons envisaged in Rule 7(7). That being the case, she should have done what was expected of her under those provisions. She should have gotten the administrator in HCSC No. 314 of 2008 to renounce his right to apply for grant in HCSC No. 224 of 2009, or gotten him to consent in writing to the making of the grant to her, or caused him to be issued with citations calling upon him to renounce his right to obtain representation or to apply for the grant. She did not provide material to suggest that she complied with Rule 7(7). Her advocate, who testified in the proceedings as her witness, conceded on oath in an affidavit, that no citations were issued for service upon the administrator in HCSC No. 314 of 2008 in keeping with Rule 7(7). The provisions in Rule 7(7) are in mandatory terms.

30. The application before me is for rectification of grant, not its revocation, and it targets the grant in HCSC No. 314 of 2008 and not that in HCSC No. 244 of 2009. The administrator in HCSC No. 314 of 2008 has not counter-applied for revocation of the grant in HCSC No. 224 of 2009. However, I am alive to the fact that section 76 grants me discretion to revoke a grant *suo moto* once I am satisfied that a case exists for its revocation on any of the grounds that are set out in section 76 of the Law of Succession Act. For those who may have doubts, the provision states:

"*76. Revocation or annulment of grant*

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or

(ii) to proceed diligently with the administration of the estate; or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances."

31. Section 76 envisages revocation of grants under three general grounds. The first one relates to where there were deficiencies with the process of obtaining the grant. That would be the case where the process was attended by defaults or defects, or where fraud and misrepresentation was employed, or where information was concealed from the court. The second situation would be where the grant is obtained properly and procedurally, but thereafter the grant holder faces challenges with administration of the estate. In such cases the grant would be revoked where the holder fails to apply for confirmation of his grant within the period stipulated in law, or fails to exercise diligence in administration of the estate, or fails to render accounts as and when required to. The third ground would be where the grant has become useless or inoperative on account changed circumstances. One example would be where the single grant holder dies.

32. In the instant case, the problem that has emerged has nothing to do with the second and third grounds. It has something to do with the manner the grant was obtained. The petitioner in HCSC No. of 224 0f 2009 did not have prior right to administration over the surviving half-brother of the deceased, that is to say the administrator in HCSC No. 314 of 2009. That being the case she was required to comply with Rule 7(7) of the Probate and Administration Rules, by getting him to renounce probate, or to consent to her applying, or by issuing citations to him to either apply or renounce probate. She never did. The provisions are mandatory. The grant was, therefore, obtained through a defective process. That should be taken against the background that she is a creditor who does not hold a court decree to validate the contract for sale of land upon which she relied on to seek and obtain representation to the estate of the deceased in HCSC No. 224 of 2009.

33. I note that the administratrix in HCSC No. 224 of 2009 does not claim the whole of Isukha/Shiakungu/738, but the half-share accruing to the deceased person in that cause. That would mean that the administrator in HCSC No. 314 of 2008 is entitled to go ahead and have the half share due to the deceased person in that cause transmitted to him. That would then leave the administratrix with the task of establishing her right to the other half.

34. After taking into account all the factors at play, I hereby make the following final orders, with a view to moving this matter forward:

(a) That I hereby review the order made herein on 20th July 2015 consolidating the two causes, by ordering that the two causes be handled separately as they relate to estates of different persons;

(b) That I hereby revoke the letters of administration intestate made in HCSC No. 224 of 2009 to Alice Khamali Shikami on 15th December 2009 and cancel the grant issued to her on 18th December 2009, and I hereby appoint, instead, Peter Imbayi Bisaho as the administrator of the estate of the deceased person the subject of that cause and a grant of letters of administration intestate shall issue to him accordingly;

(c) That as a consequence of (b) above I hereby set aside and vacate the orders made on 10th November 2010, which confirmed the grant in HCSC No. 224 of 2009, and cancel and nullify the certificate of confirmation of grant dated 25th November 2010 issued on the strength of the said confirmation orders;

(d) That I declare that Alice Khamali Shikami is at liberty to bring proceedings before the Environment and Land Court to establish the validity of the contract for sale of half share of Isukha/Shiakungu/738 between her and the deceased in HCSC No. 224 of 2009 or to determine her right to the said property;

(e) That should she fail to file suit in terms of (d) above, within the next 366 days, Peter Imbayi Bisaho shall be at liberty to apply for confirmation of the grant made to him in terms of (b) above;

(f) That I hereby review the orders made on 13th October 2010 in HCSC No. 314 of 2008 confirming the whole of Isukha/Shiakungu/738 to Peter Imbayi Bisaho and order that only the half share accruing to the deceased in that cause devolved upon the said Peter Imbayi Bisaho;

(g) That as a consequence of (f) above, the certificate of confirmation of grant dated 21st October 2010, and issued on the basis of the orders of 13th October 2010, shall be rectified or amended to reflect that Peter Imbayi Bisaho was only entitled to half share of Isukha/Shiakungu/738;

(h) That thereafter Peter Imbayi Bisaho shall be entitled to cause the said half share in Isukha/Shiakungu/738 the subject of HCSC No. 314 of 2008 to be transmitted to him in accordance with the provisions of the Land Act and the Land Registration Act;

(i) That to facilitate the orders made here above, I hereby direct the Land Registrar to restore registration of Isukha/Shiakungu/738 to the names of the two deceased persons in ½ share each;

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

(k) That any party aggrieved by the orders that I have made hereinabove is at liberty to move the Court of Appeal appropriately within twenty-eight (28) days of the date of this judgment.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 26th DAY OF July, 2019

W. MUSYOKA

JUDGE