

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 941 OF 2011

IN THE MATTER OF THE ESTATE OF THOMAS MWALE CHAGORE (DECEASED)

RULING

1. The grant made to Neddy Kageha Mwale and John Changa Mwale on 26th April 2012 was confirmed on 12th April 2017 and a certificate of confirmation of grant was duly issued, dated 17th July 2017. The survivors of the deceased were to share the estate property, being Tiriki/Gisambai/1887, equally.
2. The application that I am called upon to decide is dated 24th September 2018. It seeks that the names of Rosemary Ruhunga and John Muturi Changome be excluded from the certificate of confirmation of grant. The grounds upon which the same is sought are that the two have refused to cooperate with the applicant administrators in having the distribution set out in the certificate of confirmation of grant implemented, by their declining to furnish them with the documents required to facilitate the process, to wit copies of their national identity cards, Kenya Revenue Authority PIN Certificates and coloured passport photographs.
3. There is an affidavit of service that was lodged herein 30th April 2019, sworn on 23rd April 2019 by Wycliffe Okutoyi Omukuba, the process server who allegedly served the respondents with the process relating to the matter. The affidavit of service indicates that the respondents were allegedly served with a hearing notice. The hearing notice allegedly served is exhibited to the affidavit, it notifies of a hearing scheduled for 30th April 2019, without indicating what was coming up for hearing.
4. I have closely perused through the file of papers before me, scouring for evidence that the application dated 24th September 2018 was ever served on the persons that it is designed to affect, Rosemary Ruhunga and John Muturi Changome, and I have found no evidence. They ought to have been served with the application first, before being served with the hearing notice that was allegedly served on 10th April 2019.
5. The orders sought are drastic. The court on 12th April 2017 approved the distribution schedule that had been placed before it by the administrators, under which the two respondents were awarded a portion of Tiriki/Gisambai/1887. The effect of grant of the orders sought would be that the court will take away that entitlement from the two respondents, and thereby completely disinherit them. Deprivation of property is drastic action that ought not to be undertaken without giving the persons to be deprived opportunity to be heard. Determining the application before me before the same is properly served on the two respondents would amount to denying them their right to fair administrative action and it would drive them out of the judgment seat. I hereby decline the invitation to act in that way.
6. I shall direct the administrators herein to cause the application dated 24th September 2018 to be served on Rosemary Ruhunga and John Muturi Changome. I shall allocate a date for hearing of the said application at the delivery of this ruling.

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

W. MUSYOKA

JUDGE