



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**SUCCESSION CAUSE NUMBER 124 OF 1994**  
**IN THE MATTER OF THE ESTATE OF**  
**HOSEA KIPRONO BUNEI.....DECEASED**

**RULING**

1. This ruling is in respect of the application dated 4th of April 2017.
2. Vide the said application, Deborah Jerotich Bunei, the administrator of the estate of Kiprono Bunei (deceased) seeks orders;
  1. Spent.
  - 2. THAT** this Honourable Court be pleased to set aside/review it's Ruling of 20th June, 1997 where it allowed the Application dated 23rd February, 1995, in effect confirming the Grant of Letters of Administration Intestate issued on 29th July, 1994.
  - 3. THAT** this Honourable Court be pleased to allow the Administratrix to file afresh Summons for Confirmation of Grant.
  - 4. THAT** this Honourable Court be pleased to deem the attached Summons for Confirmation of Grant as duly filed upon payment of the requisite court fees.
  - 5. THAT** the costs of this application be in the Cause.
3. The application is supported by her affidavit and based on grounds;
  - a) **THAT** there is an error on the face of the record.
  - b) **THAT** the Application dated 23rd February, 1995 was defective in substance and form as it contradicts the provisions of Law of Succession Act of Kenya and the Rules thereunder.
  - c) **THAT** the proper Summons for Confirmation of Grant, Affidavit in Support of Summons containing the Schedule of Distribution and Consent of Beneficiaries were not filed resulting in the omission of a better portion of the Estate of the Deceased.
  - d) **THAT** in the circumstances, the Confirmation of Grant through the said Application was erroneous.

e) **THAT** it is in the interest of justice that this Honourable Court moves expediently to correct this error as the the Deceased's beneficiaries have been highly prejudiced for a mistake that is not for their making.

f) **THAT** no appeal has been preferred in respect of the Ruling sought to be reviewed by the Administratrix.

4. The gist of the application, the supporting affidavit and grounds is that a grant of letters of administration was confirmed by this Court on 20th June 1995. In the application for confirmation of grant the erstwhile Advocate for the applicant deposed to the supporting affidavit.

5. No schedule of distribution and consent of beneficiaries were not filed resulting in the omission of a better portion of the estate of the deceased.

6. The properties left out are listed as;

a) NAIROBI L. R. 1/468

b) NAIROBI BLOCK – 77/354

c) ELDORET MUNICIPALITY/BLOCK 9/1062

d) KILIFI MADETENI/579

e) CHEMBE/KIBABAMSHE/223

f) NAIROBI L. R. NO. 209/4300/135

g) UASIN GICHU DISTRICT – JABALI SETTLEMENT SCHEME/PLOT (*Attached and marked DJB – 1, 2, 3, 4, 5, 6 & 7 are copies of the title documents*)

h) NAKURU/PANGANI – PLOT 479

i) 250 KIROBON FARMERS LIMITED

j) 303.5 SHARES IN BARCLAYS BANK OF KENYA LTD

k) SHARES IN ICDC INVESTMENT COMPANY LTD

l) 2,000 UCHUMI SUPERMARKET LIMITED

m) 1800 KENYA COMMERCIAL BANK LIMITED (*Attached and marked DJB – 8, 9, 10, 11 & 12 are copies of the respective share certificates*) and

n) 1 share in DOLPHIN DRY CLEANERS LIMITED

7. It is sought therefore that a proper summons for confirmation of grant be filed to include a proper affidavit and containing mode of distribution listing all the deceased's assets and consent of beneficiaries.

8. The Court is urged to review/set aside its ruling of 20th June, 1997 which allowed confirmation of grant issued on 29/7/1994.

9. I have had regard to the application, the supporting affidavit and grounds as well as the relevant record of past proceedings.

10. Of determination is whether there is an error apparent on the face of the record that would warrant the

review and setting aside of the orders of Court of 20th June 1997.

11. It is quite clear from the record that the summons for confirmation of grant dated 23rd February 1995 is sketchy and devoid of the necessary details as required in Law.

12. As per gazette Notice No. 3629 of 1st July 1994, the Deceased died intestate on 18th February, 1994.

13. Section 71(2) of the Law of Succession Act requires that in cases of intestacy, the grant of letters of administration shall not be confirmed until the Court is satisfied as to the respective identities and shares of persons beneficially entitled and when confirmed the grant shall specify all such persons and their respective shares.

14. The form of such an application is provided for under Form 108 in the First Schedule of the Probate and Administration Rules and the affidavit in support should take the nature provided for in Form 9 of the said schedule which is to include, inter alia, the identification and shares of all persons beneficially entitled to the said estate.

15. A reading of the summons for confirmation of grant dated 23rd February, 1995 clearly shows that it did not comply with the legal requirements above enumerated.

16. In the circumstances, the grant as confirmed is empty and does not afford the administrator the opportunity to effectively administrate the estate as the assets of the deceased are not ascertained and neither are beneficiaries and their respective shares.

17. Consequently, I am satisfied that the application herein is meritable.

18. For reasons above stated, I allow the notice of motion dated 4/4/2017 in terms of prayers 2, 3 and 4. The summons for confirmation of grant dated 12/5/2017 and now deemed as duly filed be served on all beneficiaries whereupon a hearing date on priority basis be fixed in any even not later than 45 days from date of this ruling.

**Dated and Signed at Kisii this 10th day of January, 2018.**

**A. K. NDUNG'U**

**JUDGE**