

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 3061 OF 2007

IN THE MATTER OF THE ESTATE OF KARANGAE KESIER (DECEASED)

JUDGMENT

1. The summons for determination is dated 26th January 2012. It seeks revocation of the grant herein made on 2nd May 2008 to Alex S. Karangae. The principal ground upon which it is founded is that it was not disclosed that there is another cause pending at Narok law courts, being CMCS No. 34 of 2003, over the same subject matter and in relation to the estate of the same deceased person.

2. The court file in respect of Narok CMCS No. 34 of 2003 has been availed. It relates to the estate of Karangae Kesier who died on 25th February 1993 at Nairegie Enkare. He was said to have been survived by eleven children, being Alex S., David S., Simon Kofo, Muhia, Benson Kamau, Joseph, John Njoronge, Peter, George, Hezron Kofo and Josephine Njeri. He allegedly died possessed of Narok/Cis-Mara/Nairagie-Enkare/4, 35, 77, 151 and 415. The petition was lodged in that cause by Alex S. Karangae and David S. Karangae. It would appear that a grant of representation is yet to be made as there are pending objection proceedings which are yet to be determined. The file in Narok CMCS No. 34 of 2003 was active until 9th May 2012 when the last orders were made in the file before the matter was called up to the High Court in view of the instant proceedings.

3. The instant cause was initiated on 9th November 2007, during the pendency of Narok CMCS No. 34 of 2003, by Alex S. Karangae, in respect of the estate of Karangae Kesier of Nairegie Enkare, who had died on 25th February 1993. He was alleged survived by Alex S., David S., Simon Kofo, Muhia, Benson Kamau, Joseph, John Njoronge, Peter, George, Hezron Kofo and Josephine Njeri. He allegedly died possessed of the same assets as those set out in Narok CMCS No. 34 of 2003. A grant was made in the cause on 2nd May 2008 to Alex S. Karangae. The said grant was confirmed on 29th June 2010.

4. It goes without saying that the instant cause was filed in abuse of the court process, as it was initiated during the pendency of Narok CMCS No. 34 of 2003. There ought not to be two causes in respect of the same estate. It is disheartening that the administrator in the instant cause is also a petitioner in the Narok cause, so he cannot plead ignorance of the Narok cause. I note that substantive orders were made in the Narok cause. There is no doubt a good cause for revocation of the grant made in this cause and for the closure of the file. I note though that a grant has been made in this cause, but not in the Narok cause. In both causes several far reaching orders have been made by the courts.

5. In the circumstances of this case, I am persuaded that revoking the grant herein would not serve the interests of the parties or advance the cause of justice. I would rather that the two causes are consolidated and the orders made in both matters harmonized on appropriate applications by the parties. The final orders that I am persuaded to make in the circumstances are as follows:-

(a) That Nairobi HCSC No. 3061 of 2007 and Narok CMCS No. 34 of 2003 are hereby consolidated, with the lead file being HCSC No. 3061 of 2007;

(b) That the parties shall move the court for the rationalization or harmonization of the orders made in the two causes;

(c) That the estate comprises of assets situated at Narok County consequently I do hereby order transfer of the cause herein to the High Court of Kenya at Kajiado for disposal; and

(d) That there shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 25TH DAY OF NOVEMBER, 2016.

W. MUSYOKA

JUDGE