



REPUBLIC OF KENYA



**In re Estate of Stanley Paul Buliba (Deceased) (Succession Cause
2A of 2019) [2025] KEHC 3094 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3094 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 2A OF 2019
SC CHIRCHIR, J
MARCH 13, 2025**

BETWEEN

RACHAEL KHATIEVI WASWA APPLICANT

AND

MIRRIAM KAHENDA WILUND RESPONDENT

RULING

1. There are two Applications coming up for determination. The first one is dated 01/11/2023 and is brought by Racheal Khatievi Waswa (whom ,for purposes of this ruling, I would refer to her as the Applicant.). The 2nd Application is dated 14/2/2024 and is brought by Miriam Kahenda Wilunda (Respondent, for purposes of this Ruling.) Both Applications are seeking for review of the Judgment of Justice Musyoka delivered on 24/3/2023, and parties are Administrators of the Estate of Stanley Paul Buliba (Deceased)

The Summons Dated 1/11/2023

2. The summons dated 01/11/2023 seek orders as follows;
 - a. That the orders of 24/3/2023 be substituted with the orders (9) requiring accounts on the part of the Respondent herein to be rendered over rental income delivered and received on the said estate on account of tenants
 - b. Redistribute the said estate in the manner presently proposed by the Applicant herein.

3. The reason for seeking review are that the distribution of the estate failed to take into account the rental income received and not accounted for by the respondent from LR Kakamega/Municipality/Block 11/58 and Butsotso/Sikoti/5814 comprising of rental houses and student's hostels presently to the sum of Kshs. 13,440,000. Further that L.R Nos. Butsotso/Shibeya/148, Butsotso/Shibeya/1481 and



Butsotso/1482 were not distributed. It is further stated that the sum of Kshs. 85,000 on the deceased Mobile Phone No. +254722673725 was not distributed. That parcel No. Butsotso/Shibeye/1478 was erroneously substituted with and distributed as L.R Butsotso/1428.

4. The Application has further taken issue with the fact that the Judge failed to distribute Sacco Shares and money in the various Bank Accounts.
5. It is finally stated that the order of distribution in respect to Kakamega/Municipality/Block 11/58 and L.R Butsotso/Shikoti/5814 is confusing, inconveniencing and poised to cause a lot of difficulty. The Applicant has then gone ahead to propose an alternative mode of the re-distribution to that made by the Judge.

The Notice of Motion dated 14/2/2024

6. Through the above Notice of Motion, the Respondent seeks review on grounds that there was an error on the face of the record in that;
 - a. Land Parcel Nos. Butsotso/Shikoti/6714 and Butsotso/Shibeya/1428 have erroneously been captured as such and instead the same ought to be Butsotso/Shikoti/5814, Butsotso/Shibuya/1478 and Butsotso/Shibeya/1577 (Sic).
7. The Respondent further seeks for inclusion of her son Wilbur Shikuku Buliba who was left out in the distribution of the properties . The grounds for review are that the Judge had identified the survivors of the deceased to include her son Shikuku Buliba wilbur but the Judge forgot or failed to allocate the property to the said Wilbur. That Wilbur is a son of the deceased and is in equal standing with Hosea Opindi Buliba, Christine Eshikomo Buliba and Rachael Khatievi Waswa. .
8. She proposes that the identified 4 survivors as aforesaid should share in equal ratios land/parcels Nos. E/Wanga/Isongo/2816, Butsotso/Shibeya/1478 and Butsotso/Shibeya/1483. She further proposes that the 4 survivors should share in equal shares the 50%portion in Butsotso/Shikoti/5814.
9. She finally, states that there were properties left out of distribution, namely: Butsotso/Shibeya/1480, 1481 and 1482 proposes a mode of distribution of the three properties.
10. The parties have filed submissions which I have considered.
11. I have read through the entire Applications , the affidavits and the submissions and anxiously considered the Applications .
12. I am of the view that in filing these applications the parties failed to pay keen attention to the Judgment forming the subject of this review. Had they been keen they would have noted that failure to distribute parcel Nos. Butsotso/Shibeya/1480, 1481 and 1482, the money in the Bank Accounts was not a case of oversight on the court. Instead , they were not distributed because there was no evidence showing that they were the property of the deceased. This can be seen on paragraph 49 of the Judgment, the Judge stated; “Before the court embarks on a distribution of Assets, it must be satisfied that the said assets exist, and are available for distribution; what is available for distribution is the free property of the deceased. That is to say assets that are not encumbered or disputed, and are in the name of the deceased. It is not enough to just lists assets, administrators ought to go the extra mile and provide evidence that the assets proposed for distribution in fact exists. Documentation is critical to distribution for distributing property blindly without knowing whether they exist or are free property could be all exercise in futility”.
13. Then under paragraph 50 stated: the Judge went ahead and list assets whose ownership document had been provided. He stated “.....the assets that are indisputably in the name of the deceased are:



Butsotso/Shibeya/1428,(should read 1478), Butsotso/Shibeya/6714 (should read 514), Kakamega/ Municipality/Block11/58 and E/Wanga/Isongo/2816.....”

14. It is the properties listed in paragraph 50 that the Judge went ahead to distribute in his final orders under per paragraph 70 (c) of the Judgment.
15. Thus a reading of paragraph 49 and 50 and 70(c) of the Judgment indicate that the Judge only distributed the property whose ownership documents had been availed. Although there were no evidence of ownership for parcel No. Butsotso/Shibeya/1479, the Judge gave an exception because the court had been availed a copy of the transfer document plus the fact that both parties were unanimous on the fact that the said property had been transferred to a 3rd party.
16. Despite the clear sentiments of the Judge as expressed in the judgment , both parties have come back to court seeking for review without availing ownership documents for the 3 parcels. That both have referred to .Equally no records have been availed about the deceased’s funds allegedly held in various Bank Accounts.
17. Any attempt to seek review without availing the ownership documents will not secure a different result.
18. I am mindful, firstly, of the fact that this case is about the distribution of a deceased’s persons property. It is the duty of this court to ensure that the property is transmitted to the deceased’s beneficiaries without undue regard to technicalities. Secondly, a reading of the Applications and the reply indicate that the issue of re distribution of the aforesaid properties are not the only grounds upon which a review is being sought. I reserve my views on these other grounds so as not to jeopardize, the rights of either or both parties in the event that they wish to revisit this matter
19. In view of the above two considerations, and doing the best I can in the best interest of the Estate and the beneficiaries, I am constrained to strike out both Applications, which I hereby do. This will give a chance to either or both parties to comply as appropriate and give them a chance to approach the court again, without having to suffer any technical hitches.
20. Consequently:
 - a). The application dated 14/2/2024 and 01/11/2023 are hereby struck off.
 - b). Each party to meet their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ISIOLO THIS 13TH DAY OF MARCH, 2025 .

S. Chirchir

JUDGE.

In the presence of :

SUCCESION CAUSE NO. 2A OF 2019 2

