



REPUBLIC OF KENYA



**In re Estate of Kapoloni Teba Namukoma (Deceased) (Succession Cause
61 of 2004) [2024] KEHC 807 (KLR) (2 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 807 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 61 OF 2004**

WM MUSYOKA, J

FEBRUARY 2, 2024

IN THE MATTER OF THE ESTATE OF KAPOLONI TEBA NAMUKOMA (DECEASED)

RULING

1. On September 28, 2023, I delivered a ruling, where I postponed determination of the summons, dated May 3, 2018, to await service of that application, and the affidavit replying to it, on Antony Mulama Wanambiro, who had not been served with those documents prior to my reserving the matter for the ruling. I also directed that a copy of that ruling be served too.
2. An affidavit of service, sworn on December 11, 2023, by Benjamin Adeya Egesa, a court process server, was lodged herein on December 13, 2023. It is averred in it that a copy of the ruling of September 28, 2023, and the summons for revocation, of grant were served on Antony Mulama Wanambiro, on December 7, 2023, at Ramisi Sugar Company, via WhatsApp, after the court process server was denied an opportunity, by the employer of the said Antony Mulama Wanambiro, to serve him in person, within the precincts of his place of work. It is averred that the mobile telephone number to which the documents were sent, (particulars withheld), belonged to the said Antony Mulama Wanambiro, and had been given to the court process server by the said Antony Mulama Wanambiro.
3. Attached to that affidavit of service are extracts of messages from mobile telephone number (particulars withheld). One relates to an *MPesa* transaction, which indicates that the number was registered to Antony Wanambiro. The other 2 relate to messages that the process server sent to that number, forwarding the documents, and notifying the person of the date when the matter was due for mention. I note that the message was addressed to Antony Ikapolono Wanambiro. I was informed, by Ms. Nabulindo, Advocate for the applicants, on December 14, 2023, that Antony Ikapolono Wanambiro was the same person as Antony Mulama Wanambiro.
4. I am satisfied that there was proper service. Antony Mulama Wanambiro alias Antony Ikapolono Wanambiro has not filed a response to the revocation application. The administrator did not oppose it. the issue is not so much about the appointment of administrators, for the administrator was a son of the deceased, while the applicants were either creditors of the estate or their relatives. There was no



way they could have had prior right to administration over the son. I am not persuaded that I should revoke the grant, for there was nothing wrong with the manner it was obtained.

5. The issue is about the confirmation process. The applicants claim purchasers' interests, and the administrator alleges that there was trickery from Antony Mulama Wanambiro, and that he lost his land in the process. I cannot tell exactly what happened in the circumstances. I believe the justice of the situation would require vacating the confirmation orders of October 3, 2005, which orders I hereby make. The resultant certificate of confirmation of grant, dated October 3, 2005 is hereby cancelled. A fresh confirmation application shall be mounted, and shall be served on the applicants herein and on Antony Mulama Wanambiro alias Antony Ikapolono Wanambiro, within 45 days of this order. The matter shall be mentioned after 45 days, for compliance and further orders. Each party shall bear its own costs. There is leave to appeal, of 30 days, by any party aggrieved. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 2ND DAY OF FEBRUARY 2024

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Mr. Morris Teba Kapoloni, the administrator, in person.

Advocates

Ms. Nabulindo, instructed by DK Nabulindo & Company, Advocates for the Applicants.

