



REPUBLIC OF KENYA



In re Estate of Mulia and Wekunda (Deceased) (Succession Cause 64 of 1998) [2024] KEHC 5377 (KLR) (12 March 2024) (Ruling)

Neutral citation: [2024] KEHC 5377 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 64 OF 1998
REA OUGO, J
MARCH 12, 2024
IN THE MATTER OF THE ESTATE OF SIKUNYILI LUSIKE MULIA (DECEASED)
AND
IN THE MATTER OF THE ESTATE OF STEPHEN WEKUNDA (DECEASED)
AND
IN THE MATTER OF
WILLIAM WAMALWA WEKUNDA APPLICANT**

RULING

1. Willian Wamalwa Wekunda, the applicant vide an application dated 8.11.23 brought under the provisions of section 47 of the *Law of Succession Act* seeks to substitute Stephen Wekunda, now deceased. In his affidavit in support of the application, he depones as follows that; the deceased was before his death one of the administrators of the Estate of the deceased Sikunyili Lusike Mulia. The deceased Stephen Wekunda Murunga his father passed on the 6th day of June 2002. He is the son of the deceased and has been nominated by the family to substitute the deceased and to conclude the remaining processes of distribution. That he has a limited grant ad litem vide Bungoma MC Misc. (Ad Litem Cause No. E212 of 2023). The deceased was allocated 20 acres of his share comprised in L.R No. East Bukusu/ West Sangalo/681.
2. There is also a 2nd summons by one Donald Okumu Sikunyili dated the 22nd of November 2023. The applicant seeks to substitute Donald Okumu Sikunyili in place of Herman Okumu Murunga (deceased). He avers that the deceased Herman Okumu was his father and that he has been issued with a Limited grant *ad litem* vide Bungoma MC Misc. Succession Cause No. 237 of the 2023. He seeks to be appointed to enable him to finalise the matter.
3. The application was opposed by Christanus Juma Wafula (Christanus) vide a replying affidavit dated November 23, 2023. Christanus is one of the administrators of the estate that comprises L.R East



- Bukusu/ West Sangalo/ 681. I have read his affidavit. The said affidavit gives a lot of detail on the back of the land the subject of this estate. Christanus claims that other beneficiaries have been left out that is the daughters of the deceased Stephen Wekunda. Christanus has openly attacked the Judge in his replying affidavit and sought to act as a representative of the beneficiaries of the estate of the deceased.
4. The 2 applications were canvassed by way of oral submissions. I have considered the said submissions and the law as provided under the *Law of Succession Act*, Cap 160.
 5. It is not in dispute the 3 original administrators are deceased. On this court substituted Christanus and Ben Simuyu to be the administrators of the estate of Javan. There has been no appeal against the judgment delivered in 2017 distributing the estate of the deceased. By the time court delivered ruling dated the July 12, 2023, I was not aware that Herman and Stephen were now deceased. The court made the orders based on the affidavits which were filed by the applicants and therefore to attacked the court that the judge in her wisdom appointed two deceased persons who died 28 and 21 years ago is an unwarranted attack on the wisdom of this court and the judge in person. Christanus is quite disrespectful in his affidavit.
 6. In law a grant is confirmed after 6 months. Upon confirmation of the grant the administrators are required under section 83 (e) of the *Law of Succession Act* Cap 160 the administrator/ is to “within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account”. This was not done, the estate has never been wound up. All the beneficiaries remained silent until 20 plus years and then moved the court. This court could have chosen to set aside the certificate of confirmation of the grant, but it chose not to, in the interest of justice and also to enable the beneficiaries move to have the estate wound up.
 7. The 2 applications have been brought under section 47 of the *Law of Succession Act*. The said section deals with “Effect of impossibility supervening”. The spirit of Article 159 (2) of the *Constitution* and Sections 1 A and B of the *Civil Procedure Act* is that failure to cite the correct provisions of law is not fatal and would not per se warrant a dismissal of the application. (See Meru Misc Civil Application No. E007 of 2021 *Purity Kagendo Anampiu & Another vs Nellie Mugambi & Another*). the merits of the application. I will therefore penalize the applicants for citing the wrong provisions of the law.
 8. This matter has been in court since 1998, it's now 26 years since the time he was filed. The applications are merited. The estate of Herman and Stephen needs to be distributed. I will not make a finding on the issues raised by Christanus on other beneficiaries being left out as this can be pursued in whichever cause if filed by the appointed administrators of the respective families. In the interest of justice and to enable the parties to move to complete the succession of the 2 deceased persons I grant the following orders;
 - i. Donald Okumu Sikunyili is appointed to substitute Herman Okumu Murunga and William Wamalwa Wekunda is appointed to substitute Stephen Wekunda.
 - ii. The 2 administrators shall file petitions for letters of administration of the estate of Herman and Stephen in separate succession causes within 30 days from the date of this ruling and follow the process as provided under the *Law of Succession Act*.
 - iii. Anyone aggrieved can pursue their interests in the said succession causes.
 - iv. This matter will be mentioned after 30 days to confirm compliance and for directions on the status of this succession cause.
 - v. This being a family matter there shall be no orders as to costs



DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 12TH DAY OF MARCH 2024.

R. OUGO

JUDGE

In the presence of;

Mr. Murunga -For the Applicants/ online

Christanus Juma Wafula - Present / online

Mr. Bw'onchiri - For the 2nd Administrator/ online

Wilkister – C/A

