



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Magoba Mayeya (Deceased) (Succession Cause
1A of 2022) [2024] KEHC 3834 (KLR) (19 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3834 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUSIA

SUCCESSION CAUSE 1A OF 2022

WM MUSYOKA, J

APRIL 19, 2024

IN THE MATTER OF THE ESTATE OF MAGOBA MAYEYA (DECEASED)

RULING

1. What has been placed before me for determination is the summons for revocation of grant, dated 10th September 2022. There is no reply to it, by the person named therein as the respondent, who is also the administrator of the estate herein, Clement Oruowo Songa.
2. Before I can determine the said application, one way or the other, I will have to satisfy myself that the same had been served on the said respondent. I have perused the file of papers before me, and I have come across 2 affidavits of service. The first was sworn on 18th December 2022, and is in respect of service, on 7th December 2022, of a mention notice, dated 19th November 2022. The second was sworn on 6th February 2024, with respect to service, on 5th January 2024, of a mention notice dated 4th January 2024. I have not seen an affidavit of service evidencing service of the application, dated 10th September 2022.
3. What is to be determined is the application, and I cannot possibly be expected to determine an application that was never served on the respondent. Conversely, the respondent cannot be expected to respond to an application that was never served on him. The right to a hearing is at the heart of the judicial process, and any determination, without affording the other party a chance to be heard, would be an aberration. It is what natural justice is about.
4. I note, of course, that there was service of a mention notice, twice. The applicant may argue that she did effect service on the respondent, and that he ignored court process, and, flowing from that, that she should not be accused of denying the respondent an opportunity to be heard. That may well be so. However, first things first. The starting point should be with service of the application, followed by a mention before the Judge for directions. Service of the application is a critical step that cannot be overlooked.



5. Consequently, I shall direct the applicant, Millicent Aor Juma, to cause the application, dated 10th September 2022, to be served on the administrator. I shall allocate a date, for compliance and further directions, at the delivery of this ruling.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT BUSIA THIS 19TH DAY OF APRIL 2024.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Omieri, instructed by Omieri & Associates, Advocates for the applicant.

