



**Chawana & another (Suing as the Administrator of the Estate of Johnstone Maganga Chawana) v Kisoi & another; Mohamed (Interested Party) (Miscellaneous Civil Suit 3 of 2018) [2024] KEHC 9036 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9036 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
MISCELLANEOUS CIVIL SUIT 3 OF 2018  
GMA DULU, J  
JULY 11, 2024**

**BETWEEN**

**ALFRED MAGHANGA CHAWANA ..... 1<sup>ST</sup> APPLICANT  
FLORA NGUMBI CHAWANA ..... 2<sup>ND</sup> APPLICANT  
SUING AS THE ADMINISTRATOR OF THE ESTATE OF JOHNSTONE  
MAGANGA CHAWANA**

**AND**

**SWALEH KASSIM KISOI ..... 1<sup>ST</sup> RESPONDENT  
LAND REGISTRAR TAITA TAVETA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**YUSSUF HASSAN MOHAMED ..... INTERESTED PARTY**

**RULING**

1. This is an application filed by Alfred Maghanga Chawana dated 20<sup>th</sup> April 2022 seeking the following orders:-
  1. Spent
2. That this court be pleased to issue an order of injunction against the 1<sup>st</sup> respondent restraining him either by himself and or through his agents, relatives and or servants and or any other person claiming a purchasers interest under him from selling, alienating, buying claim to, trespassing onto, developing, ploughing or in any other manner dealing with the portion of land parcel No. Taita Taveta/Upper Kariokor/8 pending hearing of this application inter partes or until further orders of this court.



3. That an order do issue reversing the transfer of land parcel No. Taita Taveta/Upper Kariokor/8 which was transferred illegally by the 1<sup>st</sup> respondent through intermeddling after the demise of the deceased to Yussuf Hassan Mohamed and be returned to the names of the deceased herein.
4. That an order do issue herein to consolidate this matter with Petition No. 1 of 2014 in the matter of the estate of Amina Wakio Juma.
5. That the costs of this application be borne by the respondent.
6. The application has grounds on the face of the Notice of Motion that the applicant is a joint administrator of the estate of the late Johnstone Chawana Maghanga who was the sole heir to the estate of Amina Wakio Juma; that the late Johnstone Maganga Chawana became sole heir to Amina Wakio Juma deceased vide a written will dated 10<sup>th</sup> May 1985; that the late Johnstone Maganga Chawana petitioned the High Court in HCPA No. 1 of 2014 for Probate with Will annexed and the same was duly granted by the court; that the court later revoked the letters of administration; and that the issues raised in the ruling ought to have been fully determined at trial; that the High Court also issued stay on all dealings involving the suit property which is yet to be set aside; that no letters of administration had been issued to any party yet the respondent has already intermeddled with the estate disposing of the suit property belonging to the deceased to a third party; that this court ought to revoke and reverse the transfer as it constitutes intermeddling.
7. The application was filed with a supporting affidavit sworn on 20<sup>th</sup> April 2022 by the applicant Alfred Maghanga Chawala which amplifies the grounds, and annexed various documents. I note that the ruling dated 22<sup>nd</sup> November 2018 said to revoke the letters of administration issued to Johnstone Chawana Maganga, is in this file which is a Miscellaneous Suit, and not a Probate or Administration Cause.
8. Following the filing of this application, another application was filed by Yussuf Hassan Mohamed dated 10<sup>th</sup> June 2022 claiming an interest in the estate of the late Amina Wakio Juma Mwakingi also known as Amina Binti Abdalla, asking to be joined as interested party.
9. This court on 17<sup>th</sup> October 2023, found in favour of Yussuf Hassan Mohamed and allowed him to join this matter, as an interested party to the extent of his pleaded interest.
10. Coming back to the present application, it was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by S. M. Righa & Company Advocates for the applicant, the submissions filed by Abdullahi Yussuf & Company Advocates for the 1<sup>st</sup> respondent, and the submissions filed by Garane & Somane Advocates for the Interested Party.
11. In my view, this application will not succeed for the following reasons. The first reason is that this application brought through a Miscellaneous Civil Case file, seeks reversion of a transfer of a parcel of land based on the reason that there was intermeddling in the estate of Johnstone Maghanga Chawana which was inherited from the estate of Amina Wakio Juma Mwakichilele.
12. However, no evidence was placed before this court to show that the applicant Alfred Maghanga Chawana is the administrator of the estate of the owner of Plot – Upper Kariokor/8 – Amina Wakio Juma Mwakichilele. Thus in my view, the applicant has no locus standi to seek the orders for reversing a transfer of the subject land to Yussuf Hassan Mohamed, as pleaded in the Miscellaneous Civil Case file which is not a Probate and Administration Cause file in the names of the alleged deceased owners of the subject land.



13. The second reason why this application will fail is that, the orders sought herein in the application, having been based on alleged intermeddling of the assets of the estate of deceased person, can only be heard and determined in a Succession Cause and in that event, the succession court has jurisdiction under Section 45 and 55 the Law of Succession Act (Cap.160) to issue appropriate orders therein. Such orders for intermeddling in the assets of an estate of a deceased person cannot in my view, be issued in a Miscellaneous Civil case.
14. The applicant's counsel has argued that this matter was consolidated with Petition No. 1 of 2014, the 1<sup>st</sup> respondent's counsel and the interested party's counsel hold a different position. With regard to this matter being consolidated with Petition No. 1 of 2014 in the matter of the estate of Amina Wakio Juma, again these being civil cases, are totally different types of proceedings in which the court exercises different jurisdictions, based on the Civil Procedure Act with different legal considerations. In my view, even assuming that this civil case was consolidated with a succession cause No. 1 of 2014, the orders arising from intermeddling sought herein, can only be issued in the succession cause which is governed by the Law of Succession Act (Cap.160) and not this civil case. Thus this application having been filed in the wrong forum or cause, the application will have to fail.
15. I thus find no merits in this application. I dismiss the application and decline to issue any of the orders sought, with costs to the 1<sup>st</sup> respondent and the interested party, to be paid by Alfred Maghanga Chawana.

**DATED, SIGNED AND DELIVERED THIS 11<sup>TH</sup> DAY OF JULY 2024 IN OPEN COURT AT VOI VIRTUALLY.**

**GEORGE DULU**

**JUDGE**

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Kivinga for applicant

Mr. Abdillahi for estate of 1<sup>st</sup> respondent

Ms. Zamzam for interested party

