



**In re Estate of Mohammud Toloï Kassim alias Mohamud Toloï Kassim (Deceased)
(Succession Cause 206 of 2011) [2024] KEHC 12173 (KLR) (18 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 12173 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 206 OF 2011
S MBUNGI, J
SEPTEMBER 18, 2024**

**IN THE MATTER OF THE ESTATE OF MOHAMMOUD TOLOI
KASSIM ALIAS MOHAMUD TOLOI KASSIM-DECEASED**

BETWEEN

**PHILIS AKUMU TOLOYI 1ST PETITIONER
ASMAN MACHUKHU TOLOI 2ND PETITIONER
HAJI OCHIENG TOLOI 3RD PETITIONER
HAMISA BASHIR TOLOI 4TH PETITIONER**

AND

**BAKARI WESONGA KASSIM 1ST OBJECTOR
RAMATHAN MABIALA KASSIM 2ND OBJECTOR
HASSAN MURENGA KASSIM 3RD OBJECTOR**

JUDGMENT

1. This succession cause relates to the estate of the late Mohammud Toloï Kassim (the deceased) who died in the year 1998. the deceased had 4 brothers Bakari Wesonga Kassim Ramadhan Mabilia Kassim, Hassan Murenga Kassim and Aroso Akhusama Kassim. The latter brother is now deceased.
2. After the death of the deceased one of his widows Phylis Akumu filed a succession cause at Kakamega High Court Cause No 206 of 2011 while one of his sons Asman Machukhu Toloï filed another at Busia High Court Cause No 148 of 2008. Grants of letters of administration were issued in the two causes. However, objections were filed at both courts. At Busia court, it is the three living brothers of the deceased who filed the objections seeking for the annulment of the grant on the grounds that some of the properties listed in the succession cause did not belong to the deceased but were owned by a



- partnership business between the deceased and his 4 brothers in the business name of Mohammoud Toloï Kassim & Brothers. Later the Busia court file was called to Kakamega and the two succession causes were consolidated.
3. The objection was disposed of by way of viva voce evidence. The petitioners called one witness and the objectors called one witness. They closed their cases on 4th October 2016. The matter was adjourned to enable the advocates for the parties to file written submissions. It is after that when Farajallah Mabiale Murenga, a son of Hamisi Akhusama Kassim (deceased) who was a brother to Mohammoud Toloï Kassim (deceased) moved to Busia High Court and filed Civil Suit No 149 of 2016 seeking for determination of the ownership of the partnership property. He then filed with this court the application dated 11th November 2016 seeking for orders that there be a stay of the hearing and proceedings in this succession cause (as consolidated with Busia High Court P&A Cause No 148 of 2008), pending the hearing and determination of Busia High Court cause 149 of 2016 which application was allowed on the 4th October, 2017. The ELC Court in Busia High Court heard and concluded the case and delivered judgment on 19th October 2021.
 4. In paragraph 41 of the judgment, the court said...`in the upshot of the foregoing evidence and analysis I am convinced that the Applicant and the interested parties proved their case beyond balance of probabilities and that the suit properties though registered in the name of Mohammoud Toloï Kassim are being held in trust for the business name and as such all the partners in equal shares. I do not agree with the Applicants claim that they are exclusively entitled to L.R Nos Busia Municipality 7983/127 and 7983/7.....`
 5. This means that the estate of Mohammoud Toloï Kassim can only get a share of each of the properties owned by Mohammoud Toloï Kassim & Brothers. The properties are;
 - i. Busia Municipality Plot No.7983/127,
 - ii. Busia Municipality Plot No.7983/7
 - iii. Town council Nambale 7983/18
 - iv. Koyonzo Plot No 3
 - v. Mayoni Plot No 7
 - vi. Plot No 10 formerly Land Parcel No S Wanga/ Lureko/1481.
 6. The Law of Succession Act in Rule 41(3) obliges the court to confirm a grant in accordance to the finding of a Civil Court as to the ownership of the properties in dispute.
 7. In conclusion the objector's objection succeeds and the grants issued to the petitioners are hereby revoked. The petitioners/administrators to file fresh proposals on the distribution of the estate of the deceased taking into account the judgment in Environment and Land Court Cause No 149 of 2016(OS). Which up to now has not been appealed or set aside.
 8. This being a family matter each party shall bear its own cost.
 9. Mention on 23rd October, 2024 to confirm compliance/further directions.

DATED, SIGNED AND DELIVERED ON THIS 18TH DAY OF SEPTEMBER, 2024.

JUDGE

S. N MBUNGI



In the presence/absent of-

1. 1st Petitioner - present
2. 2nd Petitioner - absent
3. 3rd Petitioner - absent
4. 4th Petitioner - absent
5. 1st Objector - absent
6. 2nd Objector - absent
7. 3rd Objector - absent
8. Court Assistant – Elizabeth Angong’a

