



In re Estate of Joseph Martin Wandera Dindi (Deceased) (Miscellaneous Application E001 of 2022) [2023] KEHC 19029 (KLR) (19 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19029 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MISCELLANEOUS APPLICATION E001 OF 2022**

WM MUSYOKA, J

JUNE 19, 2023

IN THE MATTER OF THE ESTATE OF JOSEPH MARTIN WANDERA DINDI (DECEASED)

BETWEEN

MARY CONNIE TEBINO APPLICANT

AND

LUCIA MAKIO OCHIENG RESPONDENT

RULING

1. Although this is not christened as such, it is a miscellaneous succession cause in the estate of the late Joseph Martin Wandera Dindi. The applicant would like the administratrix of the said estate, the respondent herein, to be suspended, and removed from office as such. She would like the court to appoint her, the applicant, as sole administratrix, given that she is currently a co-administratrix of the estate with the respondent.
2. From the affidavit, sworn in support of the originating Chamber Summons herein, dated October 3, 2022, by the applicant on October 4, 2022, it is clear that there is a pending substantive succession cause in the estate of the deceased herein, wherein the respondent is an administratrix. I am talking of Busia HCSC No 192 of 2010. The applicant is also an administratrix in that cause. She tells me that the grant in that cause was confirmed, and she has exhibited a certificate of confirmation of grant, dated June 3, 2019. She has also exhibited a summons for revocation of grant, dated June 1, 2019, filed in that cause, by one Eugene Dindi Okemo, which was dismissed on October 6, 2020.
3. The application before me essentially seeks removal of the respondent as administratrix. Removal of an administrator from office is effected through revocation of his grant, which is provided for under section 76 of the *Law of Succession Act*, Cap 160, Laws of Kenya, for once a grant is revoked the holder would be left without authority to administer the estate. There would be no point of moving the court under section 47 of *Law of Succession Act*, which provides for jurisdiction of the High Court, where the intention is revocation of grant.



4. More fundamentally, if there is a substantive succession cause in the estate of a deceased person, there would be absolutely no need to initiate separate or parallel proceedings in the same estate, to achieve an objective that could very well be achieved through the substantive succession cause. That would be duplicitous, and an abuse of the process of court. Initiating or opening multiple causes over the same estate does not augur well for the estate, as it does not assist in speeding up completion of the administration, instead it achieves the opposite, confusion and stagnation.
5. The applicant has done precisely that. There is the substantive succession cause in Busia HCSC No 192 of 2010, in the estate of the deceased herein, in which the applicant is an administratrix, and, therefore, an active participant in that cause. She then initiates the instant cause, a miscellaneous application in the estate of the same deceased person, to achieve an objective that could easily be achieved through the proceedings in Busia HCSC No 192 of 2010. The court will not allow such abuse of process.
6. Let the applicant concentrate her efforts on Busia HCSC No 192 of 2010. The instant miscellaneous succession cause is needless, misconceived and an abuse of court process. The removal of the respondent should be sought in Busia HCSC No 192 of 2010, by way of a summons for revocation of grant, mounted under section 76 of the *Law of Succession Act*. Consequently, I do hereby strike out the instant miscellaneous cause. This file shall be closed, and moved to the archives. I see that the respondent has replied to the originating chamber summons herein, *vide* her affidavit sworn on November 29, 2022. She is entitled to costs, as she has needlessly been dragged to court in this cause. I award costs of the application to the respondent. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 19TH DAY OF JUNE 2023

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Appearances

Mr. Tebino, instructed by Tebino & Company, Advocates for the applicant.

Mr. Jumba, instructed by Balongo & Company, Advocates for the respondent.

