



REPUBLIC OF KENYA



In re Estate of Andrea Mutsami Mwandih (Deceased) (Succession Cause 385 of 2009) [2023] KEHC 18392 (KLR) (2 June 2023) (Ruling)

Neutral citation: [2023] KEHC 18392 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 385 OF 2009**

WM MUSYOKA, J

JUNE 2, 2023

IN THE MATTER OF THE ESTATE OF ANDREA MUTSAMI MWANDIHI (DECEASED)

RULING

1. The application that I am called upon to determine is dated January 27, 2022, which is at the instance of Truphena Sibitali Mutsami, who I shall refer hereto as the applicant. She seeks revocation of the grant herein, nullification of a certificate of confirmation of grant, setting aside of a mediation settlement agreement, among other assorted orders. Her principal complaint is that the matter was referred to mediation without her knowledge, and the matter proceeded in her absence, hence without her participation. The mediation process was conducted in the absence of several other beneficiaries, and the mediator sought to determine an imaginary dispute. That mediation settlement subsequently led to amendment of the grant herein, and grant of an application for substitution. She complains that the adoption of the settlement agreement as an order of the court was done without notice to her. Isukha/Mukhonje/1438, which was allocated to her, did not belong to the deceased.
2. In his reply, Gerald Shimoli Andrea, who I shall refer hereto as the 1st respondent, accuses the applicant of selling estate assets. He avers that setting aside of the mediation proceedings would only serve to delay finalization of the matter. He avers that when he sought substitution of the dead administrator, he served the Advocate who was on record for the applicant.
3. The applicant filed a supplementary affidavit, where she avers that the Advocate, allegedly served with the application for substitution, was not her Advocate. .
4. The application were canvassed by way of written submissions, as per the directions of May 18, 2022. Parties filed written submissions, which I have read through, and noted the arguments made.
5. The application herein is fairly straightforward. The principal complaint is that the 1st respondent had the matter referred to mediation, without reference to the applicant, and the mediation proceedings were conducted without her input, and the outcome was, in the circumstances, skewed against her. In his response, the 1st respondent does not dwell on the allegations that the mediation process did not involve the applicant, yet that is the principal complaint in the application, instead he dwells on other peripheral issues.



6. As the complaint about non-involvement, in the mediation process, has not been addressed by the 1st respondent, I shall take it that the allegations by the applicant are uncontroverted, and are the truth of the matter. As the mediation process did not involve all those beneficially interested in the estate herein, I shall accordingly allow the application, dated January 27, 2022, in its entirety. Let fresh administrators be appointed, in a process involving all family members, to be conducted by my successors at Kakamega. I shall, at the delivery of this ruling, allocate a date for that purpose. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 2ND DAY OF JUNE 2023

WM MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

Mr. Shivega, instructed by Victor Shivega & Company, Advocates for the applicant.

Mr. K'Ombwayo, instructed by M. Kiveu, Advocate for the 1st respondent.

Ms. Andia, instructed by Andia & Company, Advocates for the 3rd respondent.

