



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Chesimbili Sindani (Deceased) (Succession Cause
421 of 2014) [2023] KEHC 20590 (KLR) (21 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20590 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 421 OF 2014**

WM MUSYOKA, J

JULY 21, 2023

RULING

1. On May 28, 2021, I delivered a judgment where I confirmed the administrators, but postponed confirmation of the distribution proposed, so that an affidavit or Form 37 would confirm whether members of the first house had no claim to South Kabras/Chesero/1193. I had also allowed Festus Kanga Muhere to put in documents to show that he had bought 0.201 hectares of South Kabras/Chesero/1193 from the deceased.
2. In purported compliance, an affidavit has been filed by Gladys Naliaka Chesambili, on September 15, 2022, sworn on July 28, 2022. The purport of the affidavit is that the first house had no claim to South Kabras/Chesero/1193. She has attached certificates of official searches, showing that South Kabras/Chesero/243 was subdivided and the subtitles given to John Mwanje Chesimbili, Alfred M. Chesembili, Chesimbili Sindani, Diocese of Kakamega and Ruth Nechesa Manyasa.
3. Does the affidavit of Gladys Naliaka Chesimbili comply with the ruling of May 28, 2021? It does not. I anticipated an affidavit sworn by members of the first house. Gladys Naliaka Chesimbili is not a member of the first house, as she comes from the second house. She cannot speak for the first house. She states that the first house constituted of 5 members, being Moses Munalo Chesamili, Afed Musee Chesambili, John Chesimbili, Alfred Tawai Chesambili and Benson Mukonyole Chesambili. From the documents attached, only John Mwanje Chesimbili and Alfred M. Chesembili benefited from South Kabras/Chesero/243. The fate of Moses Munalo Chesamili, Alfred Tawai Chesambili and Benson Mukonyole Chesambili is unknown, as to whether they benefited from the subdivision of South Kabras/Chesero/243, and they have not filed affidavits to state their position. Secondly, South Kabras/Chesero/2319 and 2387, from the certificates of searches, are still in the name of the deceased, yet the administrators did not list them as assets in the estate, and did not propose them for distribution. There is no evidence that the judgment of May 28, 2021, or an extract from it, was served on members of the first house, so that they could file the affidavits contemplated, neither did the administrators get them to sign a Form 37, nor to execute renunciations.
4. On the aspect of Festus Kanga Muhere, I have not seen any documents filed to support his claim.



5. As the administrators have not complied with the orders in the judgment of May 28, 2021, the application for confirmation of grant, dated April 26, 2016, remains postponed. I shall give the administrators a second chance, to have the judgment, or a decree extracted from it, served on all members of the first house so that they can comply with the orders made therein, or the administrators file a consent in Form 37 signed by all the survivors of the deceased, including members of the first house, or renunciations by members of the first house, and to serve Festus Kanga Muhere too so that he too complies with the orders in the judgment. South Kabras/Chesero/2319 and 2387 should also be proposed for distribution.
6. In the event there is default or non-compliance, in the next 30 days, the summons for confirmation of grant, dated April 26, 2016, shall stand dismissed. The matter shall be mentioned on a date to be given at the delivery of this ruling. It shall thereafter be disposed of by my successors at Kakamega. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 21ST DAY OF JULY 2023

WM MUSYOKA

JUDGE

