



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Javan Okeno Namoyi (Deceased) (Succession Cause 256 of 2016) [2023] KEHC 20345 (KLR) (21 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20345 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 256 OF 2016**

WM MUSYOKA, J

JULY 21, 2023

RULING

1. On February 17, 2022, I gave directions, for disposal of an application dated October 22, 2021 by viva voce evidence; gave timelines for filing of further papers; and ordered the County Director of Surveys to visit Kisa/Wambulishe/2232 to ascertain acreage and occupation on the ground, and to file a report thereon.
2. Clifton Ayieta Okeno has come back to court with an application, dated September 20, 2022. I shall refer to him as applicant. He would like me to revise the directions to the County Director of Surveys, on grounds that Kisa/Wambulishe/2232 no longer exists, as it had been cancelled by earlier orders, and reverted to Kisa/Wambulishe/677. He proposes that the direction to the County Director of Surveys should relate to Kisa/Wambulishe/669 and 677, the assets available for distribution.
3. Joshua Alukaka Okeno and Gladys Keya Okeno, the respondents, filed grounds of opposition, saying that the application lacks merit, the order was in the nature of a consent and cannot be reviewed, the orders sought amount to a new cause of action, and the court was functus officio.
4. Orders were made on February 8, 2021, revoking the grant in force, and nullifying the distribution ordered under that grant. The revocation orders were made on an application, dated April 23, 2019, which had sought, among other orders, for cancellation of Kisa/Wambulishe/2232 and 2233, and their reversal to Kisa/Wambulishe/677, in the name of the deceased. The effect of the orders of February 8, 2021, was, therefore, to cancel Kisa/Wambulishe/2232 and 2233, and revert them to Kisa/Wambulishe/677. Kisa/Wambulishe/2232, therefore, no longer exists, and the directions to the County Director of Surveys, to visit that property to assess its acreage and occupation on the ground, cannot be carried to effect.
5. The application, dated September 20, 2022, is, in the circumstances, not lacking in merit. My understanding, of the orders of February 17, 2022, is that they were directions given by the court on how the confirmation application, dated October 22, 2021, is to be disposed of. The court can review or revise its directions, for they are not cast in stone. There is no new cause of action, for the application seeks to correct an absurdity, the fact that the County Director of Surveys is being asked to get the



acreage of a title that has ceased to exist. The court cannot be functus officio, so far as directions on disposal of an application that is yet to be heard and determined are concerned.

6. I hereby, accordingly, allow the application dated September 20, 2022 as prayed. The directions that I gave on February 17, 2022 are hereby reviewed in the manner proposed. I shall allocate a date for mention of the matter, at the delivery of this ruling, when a date shall be fixed for the hearing of the summons for confirmation of grant, dated October 22, 2021. Orders accordingly.

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

WM MUSYOKA

JUDGE

