



**In re Estate of Sikunyili Lusike Mulia (Deceased) (Succession Cause
64 of 1998) [2023] KEHC 20244 (KLR) (12 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20244 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 64 OF 1998
REA OUGO, J
JULY 12, 2023**

BETWEEN

JABAN MURUNGA PETITIONER

AND

HERMAN MURUNGA 1ST RESPONDENT

CHRISANTUS JUMA WAFULA 2ND RESPONDENT

HERMAN MURUNGA 3RD RESPONDENT

RULING

1. In a Notice of Motion dated the May 6, 2022 filed on the May 12, 2022 brought under section 1A, 1B, 3 & 3A of the *Civil Procedure Act* and Order 51 Rule (1) of the *Civil Procedure Rule (2010)* and any other enabling provisions of the law, the applicant seeks the following orders;
 - a. That the Honorable Court be pleased to substitute the petitioner Jaban Murunga (deceased) with the applicant Chrisantus Juma Wafula.
 - b. That upon granting prayer (a) above an order do issue directing the OCS Bungoma Police Station to provide security to the applicant to enforce the order issued by the court on the May 22, 2018 to erect boundaries so as to comply with the judgment of the court.
 - c. That costs of the application be provided for.
2. The application is supported by the affidavit of the applicant Chrisantus Juma Wafula (Chrisantus) . He avers as follows; his deceased father was the administrator of the estate of Sikunyili Lusike Mulia who was the owner of land parcel number East Bukusu / West Sang'alo/ 681. That he is the beneficiary to the deceased petitioner Jaban Murunga (Jaban) and custodian of a limited grant to continue with the suit. That for the matter to proceed the petitioner ought to be substituted. That the court issued an order on the May 22, 2018 for boundaries to be moved to comply with the judgment distributing



the status quo. That there are parties on the ground who are likely to interrupt the intended peaceful compliance of court order and hence the need for security. That it is in the interest of justice that the application be allowed.

3. The application was opposed. Ben Simiyu Wafula a son of Jaban in his replying affidavit dated October 27, 2022 avers that the applicant is his younger brother and his prayer is that their late father be substituted by the three dependents/ beneficiaries namely Ben Simiyu and Joseph Sifuna Wafula. That at no time did the family agree that the applicant was to substitute the deceased.
4. Joseph Sifuna Wafula Murunga filed his affidavit in court on the December 5, 2022. He avers he is the son of the deceased from the first house and the applicant is from the 2nd house. That he objects to the applicant being made an administrator as he has no good relationship with the other family members . that the first house has proposed Joseph Sifuna Wafula Murunga and Ben Simiyu Wafula to be made co-administrator in place of Javan Murunga. That the applicant was granted a limited grant of the estate of Javan Murunga without the knowledge and or consent of the other family members.
5. In a supplementary affidavit dated November 9, 2022, Chrisantus objected to Joseph and Ben being administrators on grounds that Ben had already given his consent to him being an administrator and that Joseph is not trustworthy as he has intermeddled with the property. He deponed that the limited grant has never been challenged by the respondents. Ben denied that he signed the consents attached by the applicant in his further affidavit filed in court on the January 21, 2023.
6. The parties gave oral evidence on who should be the administrator. Chrisantus adopted his affidavits as his evidence in chief. He maintained that he wants to be one to substitute his deceased father. Wycliff Wanjala Wafula testified that he supports the applicant to be the administrator. Aston Wekesa Wafula testified that he supports the applicant's application. Margaret Nanjala Wafula too supported the applicant. Christine Nekesa Wafula too supported the applicant's application.
7. Ben too adopted the affidavits he filed in court. He told the court that he wants to be added as an administrator for the part that belongs to his father. That Joseph too should be an administrator.
8. Joseph too adopted his affidavits. He too wants to be an administrator.

Determination

9. This matter has been in this court from 1998. Justice Aroni in a judgement delivered on the October 5, 2017 distributed the estate of the deceased Sikunyili Lusike Mulia as follows; Jaban Wafula 40.4 acres, Herman Okumu- 40 acres and Stephen Wekunda-20 acres. The court ordered that the parties to jointly meet the costs of the surveyor who will as much as possible not disturb status quo but move the boundaries to comply with the judgment. Jaban died on the December 21, 2021. Jaban by then had not sub-divided the 40.4 acres amongst the beneficiaries. After his death differences arose between his family members. The applicant, Joseph and Ben, sons of the deceased now want to substitute Jaban. Some beneficiaries testified in favor of Chrisantus who is younger than Joseph and Ben. The brothers are at loggerheads with accusations against each other. I cannot determine who is good and who is bad they know themselves. It's interesting that their mother who is alive has not been suggested to be an administrator. So, who should I appoint as an administrator?
10. Section 81 of the [Law of Succession Act](#) provides as follows:

' Powers and duties of personal representatives to vest in survivor on death of one of them
Upon the death of one or more of several executors or administrators to whom a grant of



representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:

Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.'

11. Section 81 provides that upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them. In this matter the beneficiaries from Jaban's house are adamant and want another administrator/s appointed to manage the portion of the estate that was inherited to Jaban. The Law allows up to 4 persons as administrator in a deceased's estate.
12. As early stated the 3 applicants have issues between them. The 2 elder sons of Jaban argue that Christanus should not made an administrator. I did not have the advantage to hear from all the beneficiaries from Jaban family. The court has the discretion to choose who should be an administrator in the event the beneficiaries do not agree. After considering the affidavits, evidence and noting the demeanor of the parties in court, I will appoint Ben Simiyu Wafula and Chrisantus Juma Wafula to be co- administrators with Herman Okumu and Stephen Wekunda. A fresh grant to issue to the 4 administrators and an amended certificate of grant indicating the said change. The 4 shall ensure that they comply with the provisions of section 83 (g) of the Law of Succession Act Cap 160. Each party shall bear their own costs. Mention within six months confirm compliance.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 12TH DAY OF JULY 2023.

R. E. OUGO

JUDGE

In the presence of:

Chrisantus Juma Wafula /Applicant

Ben Simuyu Wafula- Present

Joseph Sifuna Wafula- Present

Miss Wanyama h/b for Mr. Bw'onchiri

Wilkister/Okwaro C/A

