



**In re Estate of George Situma Wenani (Deceased) (Succession Cause 396 of 2012) [2023] KEHC 23359 (KLR) (13 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23359 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION CAUSE 396 OF 2012  
WM MUSYOKA, J  
OCTOBER 13, 2023**

**IN THE MATTER OF THE ESTATE OF GEORGE SITUMA WENANI (DECEASED)**

**RULING**

1. I am tasked with determining a summons for revocation of grant, dated October 25, 2022, which is brought at the instance of James Masai Isepai. I shall refer to him as the applicant. He avers that he is the administrator of the estate of his father, Alfred Isepai, who had bought 8 acres out of South Teso/Angorom/208, from the late Yohana Wenani, who was the father of the deceased herein. He alleges that the deceased herein was the administrator of the estate of the late Yohana Wenani, but in that administration he did not cater for the interest of the late Alfred Isepai. He asserts that there was non-disclosure, and it is on that basis that he would like the grant herein revoked.
2. The applicant has attached a number of documents to his affidavit. There are copies of handwritten sale of land agreements between John Wenani, Julia Wenani, Julia Magonga Wenani and Alfred Isepai. They are dated 5<sup>th</sup> March 1977, March 8, 1977, 15<sup>th</sup> of February sometime in the 1980s, and 22<sup>nd</sup> October of an unknown year. No details or particulars are given of the land that was being sold through those documents, except in one of the documents. There is also a copy of an acknowledgement, dated December 28, 1985 and March 31, 1986, signed by the deceased herein, the applicant and Julia Magonga, of a sum of money, in respect of an undisclosed piece of land.
3. The reply to the application is by way of grounds of opposition, dated August 25, 2023. It is asserted that the applicant is not a child of the deceased herein, and that the estate herein is that of George Situma Wenani, and not the late Yohana Wenani from whom the late Alfred Isepai allegedly bought the land.
4. The parties chose to canvass the application by way of written submissions. I gave directions to that effect, on 18<sup>th</sup> July 2023. Both sides then filed their respective written submissions, which I have read through, and noted the arguments made.
5. The applicant herein does not claim as a survivor or member of the family of the deceased herein, but as a creditor or purchaser or liability, on behalf of the estate of his late father, Alfred Isepai. His claim is



- not against the estate of the deceased person herein, but against the estate of the father of the deceased herein, which the deceased herein is alleged to have had administered.
6. The application, dated October 25, 2022, is misconceived. The estate of the late Alfred Isepai has no claim against the estate herein, but against the estate of the late Yohana Wenani. The alleged debt is owed by the said estate, and not the estate herein. The non-disclosure complained of was in respect of the estate of the late Yohana Wenani, and not in respect of the instant estate, of the late George Situma Wenani. I have no evidence that the late George Situma Wenani administered the estate of the late Yohana Wenani. Even if he did, that did not make the estate of the late Alfred Isepai a creditor to the estate herein. The estate of the late Alfred Isepai could only have a legitimate claim in the estate of the late Yohana Wenani, and not in the estate of his son. The administrators herein were not obliged to disclose the estate of the late Alfred Isepai as a creditor herein, since the instant estate is not indebted to that estate. The instant revocation application should have been filed in the matter of the estate of the late Yohana Wenani, if a cause was ever commenced in respect of that estate.
  7. Secondly, the property that the applicant claims is South Teso/Angorom/208. The estate herein is said to comprise of only 1 asset, South Teso/Angorom/7656, which was registered in the name of the deceased herein in 2010. No evidence has been placed on record to connect or link South Teso/Angorom/208 with South Teso/Angorom/7656. More critically, no proof has been presented to establish that South Teso/Angorom/7656 was acquired from the late Yohana Wenani, or was devolved from his estate, or was in fact the property that was the subject of the alleged transactions between the late Yohana Wenani and the late Alfred Isepai.
  8. Thirdly, the applicant has not provided adequate proof that the alleged transactions between the late Yohana Wenani and the late Alfred Isepai were in connection with South Teso/Angorom/208. The only document which mentions No. 208 was executed between Julia Magonga Wenani and the late Alfred Isepai, and not with the late Yohana Wenani. In any case, no document was placed on record, to establish that South Teso/Angorom/208 was a property registered in the name of the late Yohana Wenani.
  9. Fourthly, and finally, the alleged transactions happened sometime between 1977 and 1986. The instant summons for revocation of grant is being mounted in 2022. That is a difference of 45 years. Why wait for 45 years to pursue the interests allegedly acquired in those alleged sales? Why were the interests not pursued in the lifetime of the late Yohana Wenani? Or during that of the deceased herein, when he was allegedly administering the estate of his late father? The principles and doctrines relating to limitation of actions and laches apply. It could be that these claims are already stale, and not worth pursuing.
  10. There is absolutely no material in the record before me, upon which I can grant the orders sought in the application, dated October 25, 2022. The said application is hopelessly deficient. It exists for only one purpose, dismissal, and I hereby dismiss it, with costs. Should the applicant be aggrieved, I grant him leave of 30 days, to move the Court of Appeal, appropriately.
  11. I shall, at the delivery of this ruling, allocate this matter a date for mention, for the administrators to confirm whether the estate herein has been transmitted, and the administration completed, so that the court file can be closed, and thereafter moved to the archives.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 13<sup>TH</sup> DAY OF OCTOBER 2023**

**WM MUSYOKA**

**JUDGE**



Advocates

Mr. Okeyo, instructed by Okeyo Ochiel & Company, Advocates for the applicant.

Mr. Ouma, instructed by BM Ouma & Company, Advocates for the administrator.

