



**In re Estate of Mohamed Siaka Ali (Deceased) (Succession Cause 2417 of 2007)  
[2024] KEHC 14470 (KLR) (Family) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14470 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 2417 OF 2007  
H NAMISI, J  
NOVEMBER 21, 2024**

**BETWEEN**

**SAID SEIF SIAKA ..... 1<sup>ST</sup> APPLICANT  
SOUD SEIF SIAKA ..... 2<sup>ND</sup> APPLICANT  
ALI SEIF SIAKA ..... 3<sup>RD</sup> APPLICANT**

**AND**

**MOHAMED SHAIBU SHOSI ..... RESPONDENT**

**RULING**

1. The Deceased herein passed away on 5 August 2005. Limited Grant of Letters of Administration ad litem were issued to the Respondent herein on 24 September 2007. The said Letters of Administration were limited to the purpose only of enabling the Respondent to prosecute HCCC No. 663 of 2005 on behalf of the Deceased.
2. By Summons dated 7th August 2024, the Applicants herein have moved the Court seeking the following orders:
  - i. Spent
  - ii. That this Honourable Court be pleased to compel the Applicant herein, Mohamoud Shaibu Shosi, to produce to Court within 14 days a full and accurate inventory of all assets and liabilities of the Deceased;
  - iii. That this Honourable Court be pleased to compel the Applicant to deposit into Court the title deed for LR. No Kilifi/jimba/669 which property is part of the Deceased’s assets;



3. The Application is supported by the Affidavit sworn by the Applicants and premised on the grounds on the face of it. In the Supporting Affidavit, the Applicants have attached copies of pleadings in Nairobi ELC Case No. 663 of 2005, including a Decree issued on 6th August 2015, with the following orders:
  - i. That the registration of land parcel Kilifi/jimba/669 in favour of Sunplam Limited be and is hereby declared null and void and is ordered to be cancelled forthwith;
  - ii. That the Chief Land Registrar through the Land Registrar, Kilifi be and is hereby ordered to register Mohamed Saibu Shosi, the personal representative of Mohamed Siaka Ali (deceased) as the owner of land parcel Kilifi/jimba/669 in place of Sunplam Limited, the 1st Defendant herein;
  - iii. That the suit against the 2nd Defendant be and is hereby dismissed;
  - iv. That each party will bear their own costs of the suit.
4. Also attached the Supporting Affidavit is a Decree dated 16 December 2020 issued by the Kadhi's Court at Lamu in Succession Cause No. 01 of 2020; In the Matter of the Estate of Mohamed Siaka Ali (Deceased), in which the Court held that the 3 Applicants herein are the rightful heirs of the Deceased.
5. In response thereto, the Respondent filed a Replying Affidavit dated 2nd October 2024. Alongside his Replying Affidavit, the Respondent filed an Affidavit sworn by David Pius Mugambi, Advocate, who was on record for the Respondent in ELC NO. 663 of 2005. At paragraph 14 thereof, the Advocate admits that the subject property is now registered in his name, but does not explain the circumstances in which the said title was transferred to him, its ownership having been determined in the very case he handled on behalf of the Respondent. The Respondent's Affidavit is equally silent on how this property changed hands.
6. I have considered the Court record, the Summons, Replying Affidavits and Further Affidavit. I note that no Certificate of Confirmation of Grant of Letters of Administration has been presented to this Court. I also note that both the Respondent and his Advocate have not challenged the validity of the order presented in case No ELC 663 of 2005 or the one issued by the Kadhis Court.
7. Section 45 of the *Law of Succession Act* provides as follows:
  1. Except so far as expressly authorised by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
  2. Any person who contravenes the provisions of this section shall-
    - a. Be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
    - b. Be answerable to the rightful executor, administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.
8. In the case of Veronica Njoki Wakagoto (Deceased) [2013] eKLR, the Court held thus:

“The effect of section 45 is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorised to do so by the Law. Such authority emanates



from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”

9. Section 47 of the Act provides as follows:

The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.

10. Similarly, Rule 73 of the Probate and Administration Rules provides that:

Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

11. It is admitted by both the Respondent and his counsel that the title for land parcel Kilifi/jimba/669 is now registered in the name of Counsel. The circumstances in which the said transfer was effected are unclear. What is clear, however, is that the Applicants have a valid reason to be apprehensive about intermeddling with the estate of the Deceased.

12. In the circumstances, I make the following orders:

- i. The title for land parcel Kilifi/jimba/669 which is now registered in the name of David Pius Mugambi be and is hereby cancelled and the same to revert to the estate of the Deceased, pending confirmation of Grant of Letters of Administration Intestate;
- ii. The title for land parcel Kilifi/jimba/669 be deposited in Court within the next 21 days;
- iii. Matter be mentioned on 18 December 2024 to confirm compliance with order (ii) above;

**DATED AND DELIVERED AT NAIROBI THIS 21 DAY OF NOVEMBER 2024**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Ms. Nyambura h/b Ondabu.....for the Applicants

N/A..... for the Respondent

