

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

SUCCESSION CAUSE NO. 34 OF 2019

IN THE MATTER OF THE ESTATE OF LESINKO SOKORTE KIIRAYO (DECEASED)

RULING

Pending before this court are two applications. There is Summons for Confirmation dated 24th July 2019 and Chamber Summons brought by M/S F. A. Badia & Co. Advocates against the Administrators dated 27th July 2019. On 16th April 2021, this court (Mwita, J) gave directions, *inter alia*, that the two applications be heard together, that the Summons for Confirmation of the grant to be heard by viva voce evidence and the Chamber Summons by way of submissions. It is not specifically stated that the submissions be written but that is what Ms Badia understood those directions to mean. She filed her submissions on 28th June 2021. They are dated 25th June 2021.

On 2nd November 2021, when parties appeared before me, Mr. Sankale for the 2nd Administrator informed the court that he was not opposed to Ms Badia's application dated 27th July 2019. Mr. Mosei for 1st Administrator, too, informed the court that he would not be filing submissions in respect of Ms Badia's Application and that court can proceed to make a ruling.

The Chamber Summons dated 27th July 2020 seeks 7 prayers as follows:

1. That, this Honourable Court be and is hereby pleased to enjoin the former Advocates/Applicants F.A Badia & Company Advocates as Creditors to the Estate of the Deceased Lesinko Sokorte Kirayio in furtherance of Legal Services offered to the 1st Administrator/Respondent and the beneficiaries directly under her between 03/07/2015 and 14/02/2019.
2. That, this Honourable Court be and is hereby pleased to recognize, acknowledge and enforce the Acknowledgement of Instructions dated 13th July 2015 from F. A Badia & Company Advocates as endorsed between Nyokabi Lesinko Leserogerere & Badia. A. Fiona of F. A Badia & Company Advocates.
3. That, the Honourable Court be and is hereby pleased to recognize, acknowledge and enforce the Acknowledgement of Instructions dated 13th July 2015 from F. A Badia & Company Advocates as endorsed between Joyce Paina Lesokorte & Badia. A. Fiona of F. A Badia & Company Advocates.
4. That, the Honourable Court be and is hereby pleased to recognize, acknowledge and enforce the Acknowledgement of Payment of Instructions; Succession Cause No. 39 of 2008 in the Senior Principal Magistrates Court at Kajiado dated 20th July 2015 from F.A Badia & Company Advocates as endorsed between Nyokabi Lesinko Leserogerere, Joyce Paima Lesokorte, Moses Koikai Tianda and Badia A. Fiona of F. A Badia & Company Advocates; and that the particular intended portion of the estate of the deceased be hived off from the portion to be assigned to the 1st Administrator/Respondent and the beneficiaries directly under her.
5. That, the Honourable Court be and is hereby pleased to issue any other and further orders as it deems appropriate in the wider interest of justice.
6. That, the costs of this Application shall be borne from the Estate of the Deceased Lesinko Sokorte Kirayio more specifically the portion to be assigned to the 1st Administrator/Respondent and the beneficiaries directly under her.

The Applicant has sworn an affidavit in support of this application. The contents of the affidavit are self-explanatory and I need not reproduce them here. I have read it and all the attachments to it.

I have seen a Replying Affidavit by the 1st Administrator/Respondent dated 22nd October 2020. She claims that she paid in cash the fee for services rendered by the Applicant but forgot to have the agreement giving the Applicant ¼ acre as payment of legal services. Given that Mr. Mosei for the 1st Administrator/Respondent has informed the court that he is not opposed to the Applicant's Application, I will not consider the Replying Affidavit.

The Applicant also filed Further Affidavit in Reply to the Replying Affidavit by the 1st Administrator. I have considered its contents. I have also considered the Submissions and the cited authorities. I need not belabour the issues herein given that none of the administratrixes are opposed to this Application. I proceed to grant the Application dated 27th July 2020 in its entirety.

In respect of the remaining pending application dated 24th July 2019, directions have already been given that it shall proceed by viva voce evidence with cross examination of the two administratrixes. A date shall be taken in court for that purpose. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 8TH NOVEMBER 2021.

S. N. MUTUKU

JUDGE