



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1995 OF 2012

IN THE MATTER OF THE ESTATE OF LYOSHI SAYISI LUCY Alias LUCIA LYOSHI SAYISI – DECEASED

LEONIDA LIBUTSULI LYOSHI OWEGI.....PETITIONER/RESPONDENT

VERSUS

LUCY LUGONZO ODHIAMBO.....1ST OBJECTOR/APPLICANT

MAURICE OTUNGA LUGONZO.....2ND OBJECTOR/APPLICANT

MARY LUGONZO.....2ND OBJECTOR/APPLICANT

RULING

1. The deceased Lyoshi Sayisi Lucy Alias Lucia Lyoshi Sayisi hailed from Kakamega, at a place called Eshisilu. She died on 14th May 2012 and was buried there on land parcel Butso/so/Shibeye/676 measuring about 14.5 acres. On the basis that she left a written Will dated 24th October 2000 bequeathing the land, bank accounts and shares to the petitioner/respondent Leonida Libutsuli Lyoshi Owegi, a petition for grant of probate was filed before this court on 31st August 2012. The grant was issued on 24th January 2013, and confirmed on 23rd September 2013 on the basis of the Will.
2. The objectors/applicants Lucy Lugonzo Odhiambo, Maurice Otunga Lugonzo and Mary Lugonzo filed an application dated 13th November 2013 for the revocation of the grant. Their case was that the deceased was their stepmother, having married their father Stephen Lugonzo on 19th December 1981. Their father established them and the deceased on this parcel of land. Their father later died.
3. The applicants claimed that the alleged Will was a forgery, and that, in any case, there was no reference to them when the petitioner came to court to obtain the grant which was confirmed. That application is pending hearing and determination, but there was an order made on 19th November 2013 staying the certificate of confirmation.
4. The present application is dated 13th November 2013 and seeks several prayers, but the one I asked the parties to address me on was prayer (e) that sought the transfer of cause to the High Court in Kakamega for hearing and disposal.
5. It is common ground that the deceased was from Kakamega, died in Kakamega and her estate is in Kakamega. It is also not in dispute that the petitioner and the applicants all live in Kakamega.
6. It was on the basis of the unchallenged facts that the applicants sought the cause to be transferred to the High Court at Kakamega. They argued that that was the convenient court for them, and for all the parties and their prospective witnesses.
7. The petitioner's case was that the High Court at Nairobi had unlimited jurisdiction, and therefore able to hear and determine the cause. Secondly, now that there was a grant which was confirmed the matter was as good as closed, and therefore there remained nothing to be transferred to the High Court at Kakamega.
8. Several authorities were cited on either side in the written submissions.

9. Once the Will was challenged and the applicants sought to have the grant revoked, there are substantial issues of law and fact that a succession court will be called upon to hear and determine. To start with, the court will have to direct whether the application for revocation will be heard orally, or will be heard on affidavit evidence only. There is therefore the prospect that witnesses may become necessary. The applicants stated, without challenge, that the witnesses are from Kakamega.

10. Yes, it is true that the High Court has unlimited original jurisdiction in civil matters. This is except for matters environment and land and employment and labour relations. However, a decision where to file a civil claim must bear in mind **Article 48** of the Constitution that deals with access to justice for the parties to the claim. It is because of the **Article**, and the provisions of the **Judicial Service Act (No. 1 of 2011)**, that the Judiciary has endeavoured to establish courts across the country. The intention is that Kenyans should seek judicial services at the courts nearest to them. That would be convenient to a plaintiff, a defendant and their witnesses.

11. That being the case, and the application having been brought under **section 47** of the **Law of succession Act (Cap. 160)** and **rule 73** of the **Probate and Administration Rules**, I transfer the entire cause to the High Court at Kakamega for hearing and resolution.

12. The cause shall be mentioned at the High Court at Kakamega on **23rd November 2021** for directions.

13. I make no orders for costs.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF NOVEMBER, 2021

A.O. MUCHELULE

JUDGE