

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 321 OF 1988

IN THE MATTER OF THE ESTATE OF MWANI ANYUMBA (DECEASED)

RULING

1. The application dated 25th April 2021 seeks revocation of a grant that was made herein on 24th February 1989, and confirmed on 25th September 1989. It is made at the instance of Wilson Musungu Shitasa. He would like the grant made to himself. He would also like the certificate of confirmation of grant which was extracted from the orders of 24th February 1989, to be rectified, so as to devolve Butso/So/Shikoti/130 to himself. He also would like orders to be made to cancel or nullify the subdivision of that parcel of land, and its transfer to the beneficiaries named in the certificate, and its restoration to the original owner, the deceased herein.

2. In the grounds on the face of the application and the facts deposed in the affidavit, he claims to be the rightful owner of Butso/So/Shikoti/130, on the basis that the same had been awarded to him by the Lurambi Land Disputes Tribunal, whose order was adopted by the court on 8th March 2021.

3. In response, the respondent, Japheth Mwani, contends that if the applicant had a right to the property in question, then the right must have been extinguished a long time ago. He got the award of the Tribunal in 1994, yet he did not get it adopted until 2021. He avers that Butso/So/Shikoti/130 has been subdivided into several portions that have passed into the hands of several individuals.

4. Firstly, I doubt whether I have any jurisdiction to order cancellation of a titles created through transmission following confirmation of grant. The High Court has jurisdiction over distribution of estates of dead people, through the confirmation process. After confirmation, the High Court become pretty much *functus officio*. The certificate of confirmation of grant is presented to the Land Registrar, so that the Land Registrar can give effect to it by way transmission of the land in question. Transmission of land is a process that is governed by the Land Registration Act, No. 3 of 2012, and the Land Act, No. 6 of 2012. The Law of Succession Act, Cap 160, Laws of Kenya, under which the High Court exercises probate jurisdiction, does not provide for transmission of land. Any disputes relating to transmission ought to be handled within the processes set out in the Land Registration Act and the Land Act, and the court with jurisdiction over such disputes, arising from transmission, should be the Environment and Land, which is the court for the purposes of two statutes.

5. The award that the applicant obtained, and which the Chief Magistrate's court, in Kakamega Mic Civil Land Award No. 8 of 2020, adopted as judgment of the court, is enforceable against the other party. That enforcement is not through the probate court in succession proceedings, but through the court with jurisdiction for enforcement of land awards, which is the Environment and Land Court, or the magistrates court with jurisdiction. The applicant should be seeking to enforce the order in the usual way that an award of a civil court is enforced, by way of execution, and not through succession.

6. Furthermore, the award was made in 1994. One would wonder where the applicant has been all these years. He seeks adoption of the award, obviously for enforcement purposes, so many years later. There are rules on limitation and effluxion of time with respect to enforcement or execution of orders and awards. I wonder whether these rules do not apply to the applicant. I wonder too whether the Chief Magistrate's court would have jurisdiction to adopt an award that was made so many years ago, and even then after the law that had conferred the court with jurisdiction to do so has been repealed. The Land Disputes Tribunals Act, No. 18 of 1990, was repealed by section 31 of the Environment and Land Court Act, No. 19 of 2011, when the latter came into force on 30th August 2011. With the repeal of the Land Disputes Tribunals Act went the jurisdiction that had been conferred by it on magistrates' courts to adopt the awards of the defunct Tribunal. Jurisdiction is conferred by statute, the statute that had conferred jurisdiction on the magistrates' court to adopt awards of the Tribunal was repealed in 2011, so where did the court in 2021 get jurisdiction to adopt the awards of the defunct Tribunal?

7. Revocation of grants is provided for under section 76 of the Law of Succession Act. The applicant has not sought to demonstrate that he anchors his application on any of the grounds set out in that provision. There is no an allegation that the process of obtaining the grant was defective, or was attended by fraud or misrepresentation, or concealment of matter from court. It has not been alleged that the administratrix has failed to administer the estate by either not applying for confirmation of her grant within the set timelines, or has failed to proceed diligently with administration, or has failed to render accounts as and when it was required of her. Neither is it alleged that the grant has otherwise become useless and inoperative. Revocation of a grant can only be made on grounds that fall within the four corners of section 76. The applicant has not shown that his case falls within the four corners of section 76.

8. There can be no merit in the application, dated 25th April 2021, and I hereby strike out the same, with costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 10TH DAY OF DECEMBER, 2021

W MUSYOKA

JUDGE