



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**SUCCESSION CAUSE NO. 286 OF 2009**

**IN THE MATTER OF THE ESTATE OF SANANGA OKONDA (DECEASED)**

**RULING**

1. I delivered a ruling on 24<sup>th</sup> July 2020, directing the administrators to complete the exercise of collecting, gathering and getting all the assets of the estate, and to, particularly, perfect the titles of the assets that the deceased had allegedly bought but died before the said assets were transferred to his name.
2. The 2nd administratrix, in an effort to comply with the said directions, filed an affidavit, in which she registers the inability of all the three administrators to agree, and, therefore, suggesting that they could not comply with the directions given by the court. She prays that that matter be referred to alternative dispute resolution (ADR) mechanisms, so that the same can be resolved. The other administrators have not filed affidavits.
3. Administrators have a statutory duty to collect, gather and get in the assets of the estate. As said above, that includes having to perfect titles that were not conveyed to the name of the deceased as at the date of his death. That responsibility cannot be transferred to other persons, since the estate of the deceased vests in the administrators, by virtue of section 79 of the Law of Succession Act, Cap 160, Laws of Kenya. ADR cannot help the administrators on collecting, gathering and getting in the assets of the estate. Neither can it help in perfecting titles.
4. What this suggests to me is that the administrators herein do not either understand their role as such, or their duties, or that they are simply incompetent. An estate cannot be distributed before the assets have been properly identified and secured. The collection, gathering and getting in of the assets is in preparation of the exercise of distribution. The exercise precedes distribution, and it is premature to rush to distribution before the estate has been gathered. That is the very first duty of the administrators. Distribution is the last duty, which comes after the first duty has been discharged fully.
5. It must be made clear that the probate court distributes assets that are established as belonging to the deceased. Proof of ownership of property is through documents. For land, documents of ownership are issued by the government, either at national or county level. Certificates of ownerships must be availed, be they title deeds or certificates of official searches or letters from relevant authorities confirming that those assets exist and, according to their records, the same belong to the estate of the deceased. No court will distribute an asset whose authenticity and ownership is not established. Courts do not act blindly. The law is about certainty, and not vagueness, uncertainty and ambiguity.
6. A court does not confirm a grant merely because the administrators have invited the court to confirm it. It must be satisfied that all the persons beneficially entitled have been ascertained, the assets that ought to be shared amongst the said beneficiaries have been ascertained, and that there is proof that the said assets belong to the deceased. The court does not distribute assets that are not shown to belong to the estate of the deceased. That would be an exercise in futility, for the lands authorities would not transmit property, in accordance with the certificate of confirmation of grant, where the assets sought to be transmitted do not either belong to the deceased or belong to someone else or ownership thereof is unascertainable.
7. Since the Constitution encourages the courts to promote ADR, I shall give the administrators an opportunity to try to use mediation to identify or ascertain the assets of the estate, with a view to collect, gather and get them in. The court cannot distribute the estate in the absence of full disclosure or ascertainment of the assets by the administrators
8. It would be in the best interests of the parties hereto that the matter be hereby referred to court annexed mediation, with a view to assist the administrators come up with a comprehensive list of the assets of the estate, and to amicably work out a mode of distribution, which is fair and acceptable to all affected. Let the matter be placed before the Medication Deputy Registrar for the usual processes and formalities.

**DELIVERED DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 4<sup>TH</sup> DAY OF DECEMBER 2020**

**W MUSYOKA**

**JUDGE**