



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 1115 OF 1993

IN THE MATTER OF THE ESTATE OF JOSEPH KARANJA (DECEASED)

CHRISTOPHER KIMANI KARANJAAPPLICANT/BENEFICIARY

VERSUS

EDWARD MUKUNDI KARANJA.....1ST RESPONDENT/ADMINISTRATOR

VERONICA WANJIKU KARANJA.....2ND RESPONDENT/ADMINISTRATOR

RULING

1. The Application coming for consideration in this Ruling is the one dated 24.4.2019 seeking for orders issued on 29.7.2018 to be set aside.
2. The Court made the following orders on 20.7.2018.
 - (i) **THAT pending the hearing and determination of summons for rectification of grant, prohibition order be and is hereby registered against the property known as LR. NO. DAG/KANGEMI 278.**
 - (ii) **THAT Succession Cause No. 906 of 1995 in the matter of the Estate of HEZRON KAMAU WAWERU (Deceased) be consolidated with the matter herein only to the extent of that Property known as LR NO. DAG/KANGEMI 278 which was confirmed in the matter.**
 - (iii) **THAT the matter be heard on a date to be obtained from the Registry.**
3. The Application dated 24.4.2019 is supported by the Affidavit of DAVID WAWERU KAMAU of even date in which it is deposed that Succession Cause No. 906 of 1995 has a protest against confirmation of grant which is part heard and that this was not disclosed to the Court.
4. Further, that the orders for consolidation granted exparte and without notice to the parties in Succession Cause No 906 of 1995.
5. The parties filed written submissions, which I have duly considered. The circumstances under which cases are consolidated follow these principles for consolidation of suits as set out in the case of **Nyati Security Guards & Services Ltd V Municipal Council of Mombasa (2000) eKLR** where the court held as follows:

“The situations in which consolidation can be ordered include where there are two or more suits for matters pending in the same court where:

 - a) Some common question of law or fact arises in both or all of them;*
 - b) The rights or reliefs claimed in them are in respect of or arise out of the same transaction;*
 - c) For some other reason, it is desirable to make an order for consolidating them;*
6. See the cases of **STUMBERG AND ANOTHER VS POTGEITER 1970 E.A. 323** as follows:-

“Where there are common questions of law or facts in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time, consolidation should be ordered”

In the Indian case of **BRIJ KISHORE VS BIR SINGH & OTHERS at the High Court of Punjab and Harana (L.R 5922 of 2013** Justice Paramjeat Singh quotes the following from the Supreme Court Case of **PREM LALA NAHATA & ANOTHER VS CHANDI PRASAD SIKARIA, (2007) 2, SUPREME COURT CASES 551 at paragraph 18:-**

“It cannot be disputed that the Court has power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the Court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the Court and it appears to the Court that some common questions of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits”

7. In the current case, I find that the two estates are not related. It is in the interest of justice that each case proceeds separately and I allow the application dated 24.4.2019 in the following terms:

- (i) THAT the Orders made on 20.7.2018 consolidating Succession Cause No. 906 of 1995 ad this Succession Cause No. (1115 of 1993 be and are hereby set aside.**
- (ii) THAT the two Succession causes will proceed separately.**
- (iii) THAT the prohibition order registered against the property known as LR. No. DAG/KANGEMI/278 to remain pending the hearing and determination of the Summons for rectification filed herein.**
- (iv) THAT each party to bear its own costs of this application.**

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 20TH DAY OF SEPTEMBER, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.