



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**SUCCESSION CAUSE NO. 58 OF 1996**

**IN THE MATTER OF THE ESTATE OF JACKSON SAKWA CHAKONGO (DECEASED)**

**RULING**

1. The application coming up for hearing on 19<sup>th</sup> June 2018 was that dated 26<sup>th</sup> April 2018. However, before I could begin to hear the said application; the respondent said that he had filed an application dated 18<sup>th</sup> June 2018 which he wanted heard first followed by that dated 26<sup>th</sup> April 2018. The applicant then protested that he had not been served yet with the said application. In the end I allowed the parties to urge that application dated 26<sup>th</sup> April 2018..

2. The application dated 26<sup>th</sup> April 2018 is brought at the instance of John Elijah Sakwa, in collaboration with Benjamin Makokha and Shem Chakongo Sakwa. He would like the Kakamega County Surveyor to visit E. Wanga/Isongo/1462, the estate property, with a view to subdivide it and apportion to each beneficiary their portion in compliance with the orders made by the court at the confirmation of the grant. He would also like the police to provide security during the exercise. He states that the respondent, who is the administrator of the estate, has failed to carry out the confirmation orders.

3. The respondent, Charles Chitechi Sakwa, reacted to the application through an affidavit sworn on 18<sup>th</sup> June 2018. He is the administrator of the estate. He concedes that his grant was confirmed on 18<sup>th</sup> October 2010. A certificate of confirmation of grant issued as per the terms of the said orders, and was registered with the Kakamega lands office. He, however, says that the distribution of the estate ordered by the court was contrary to the will of the deceased. He also contests the allegation that he has been dormant as an administrator, and accuses his siblings of selling of their entitlements from the estate.

4. The two parties addressed me orally on the said application. Their speeches largely reflected the averments made in their respective affidavits.

5. In the course of preparing this ruling, I have had occasion to look at the Motion by the administrator dated 18<sup>th</sup> June 2018. It seeks review of the orders that confirmed his grant on 18<sup>th</sup> October 2010. He is no doubt aggrieved by the said orders and he would like them reviewed before they are implemented. He argues that the said orders are contrary to what he had sought in his application and do not tally with the will of the deceased.

6. I have given the matter some thought. The application of 26<sup>th</sup> April 2018 seeks implementation of the confirmation orders, while that of 18<sup>th</sup> June 2018 would like those orders reviewed or rectified before the distribution. If I determine the application of 26<sup>th</sup> April 2018, that dated 18<sup>th</sup> June 2018 will have been overtaken by events.

7. Each party is entitled to his day in court. The administrator has moved the court in his application dated 18<sup>th</sup> June 2018. It appears to be a response to that dated 26<sup>th</sup> April 2018. If I determine that of 26<sup>th</sup> April 2018 ahead of his application he would effectively be removed from the seat of justice without a hearing. He is entitled to a hearing and to his day in court on the said application before I determine the application dated 26<sup>th</sup> April 2018.

8. The orders that I will make in the interests of justice are as follows -

(a) That the ruling on the application dated 26<sup>th</sup> April 2018 shall be held in abeyance to await hearing of the application dated 18<sup>th</sup> June 2018;

(b) That John Elijah Sakwa, Benjamin Makokha and Shem Chakongo Sakwa to file their responses to the application dated 18<sup>th</sup> June 2018;

(c) That shall thereafter hear the said application on a date that I shall give at the delivery of this ruling;

(d) That both applications shall be determined simultaneously thereafter; and

(e) That each party shall bear their own costs.

**DATED, SIGNED and DELIVERED at KAKAMEGA THIS 19<sup>TH</sup> DAY OF JULY , 2018**

**W. MUSYOKA**

**JUDGE**