



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC MISC NO.225 OF 2000**

**REPUBLIC.....APPLICANT**

**VERSUS**

**1. COMMISSIONER OF LANDS**

**2. CHIEF LAND REGISTRAR.....RESPONDENTS**

**AND**

**ISANGAWISHI GROUP RANCH.....INTERESTED PARTY/APPLICANT**

**1. EDWARD LENJO MUSAMULI**

**2. PASCALIN SHOLLO**

**3. MILTON MASALA MWIWAWI**

**4. RICHARD MWABILI**

**5. BERNARD NDOLE MBAYA**

**6. NOBERT LENJO MSHAMBA.....EX - PARTE**

**RULING**

**1. By a Notice of Motion brought under Order 22 Rule 40 of the Civil Procedure Rules, the Interested Party/Applicant moved the court for orders:**

**1. Spent**

**2. That a prohibitory order be issued prohibiting the following companies from transferring or paying any dividends on account of shares in the name of Edward Lenjo Musamuki (deceased), and that is to say;**

**a. Centum Investment Company Limited.**

**b. East Africa Breweries Limited**

**c. Rukinga Ranching Company Limited.**

**d. Voi Development Company Limited.**

**e. Amaka Development Company Limited**

**f. Steers Holding Company Limited.**

**g. L.C.D.C. Investment Company Limited**

**3. That a prohibitory Order be issued against Everest Matolo Lenjo and Dominy Lenjo the administrators of the estate of Edward Lenjo Musamuli restraining them from transferring or receiving any dividends on account of the shares of Edward Lenjo Musamuli (deceased) in Centum Limited, East Africa Breweries Limited, Rukinga Ranching Company Limited, Voi Development Company Limited, Amaka Development Company Limited, Steers Holdings Company Limited and L.C.D.C Investment Company Limited until the sum of Kshs.7,434,045 together with accrued interests is paid to the applicant.**

**4. That the court do give directions for the disposal of the shares of the deceased in the companies set out in 2 and 3 above to realize proceeds to settle the sum of Kshs.7,434,045 together with accrued interests.**

**5. That the costs of the application be provided for.**

2. The application is supported by the affidavit of Michael Bruno Mzungu Irengi, the Chairman of the Applicant/deed holder. He has deposed that on 28<sup>th</sup> March, 2008, the court in this suit passed a decree against the judgment debtor in favour of the applicant for Kshs.7,434,045.00 plus interest at court rates. That the 1<sup>st</sup> Ex-parte applicant, Edward Lenjo Musamuli died on 4.12.12 and prior to his death, the liability herein was still outstanding. It is deposed that after the death of the 1<sup>st</sup> Ex-parte Applicant, a Probate and Administration Cause No.50 of 2015 Voi (formerly HCC Succession Cause No.499 of 2014 Mombasa) was instituted for purposes of securing Letters of Administration that resulted to Everest Matolo Lenjo and Dominy Lenjo Musamali being appointed as administrators of the estate of the deceased. Copies of the application for confirmation of grant dated 5/5/2017, certificate of confirmation of grant issued on 31/7/17 and an application for amendment of certificate of confirmation of grant dated 19/7/19 have been annexed. That the said documents revealed that the deceased held shares in the aforesaid companies, and the said shares have not yet been distributed, hence this application. It is deposed that investigations revealed that the deceased had no known assets thus far. The applicant is apprehensive that without the court's intervention, the administrators of the deceased's estate may utilize the shares of the deceased in the said companies and fail to settle the decretal sum of Kshs.7,434,045/= together with accrued interests.

3. In response to the said application, Everest Matolo Lenjo and Dominy Lenjo filed a replying affidavit on 22<sup>nd</sup> November, 2019 in which they deposed that they are part of the family of the 1<sup>st</sup> ex-parte Applicant, the late Edward Lenjo Musamuli but are not parties to these proceedings. That the application does not seek to join them to these proceedings yet the application seeks orders directed against them to stop them from executing their duties as administrators of the deceased's estate. They further contend that the application is not made in good faith, bad in law and unnecessary. It is deposed that the applicant has not been keen in pursuing its costs, but only interested in traumatizing the family of the deceased. They have deposed that there were six (6) Ex-parte applicants, five of whom are still alive, but the applicant has never made any attempt to recover the subject costs or any part of it from them. They further deposed that the garnishee proceedings alluded by the applicant was only against the deceased's estate and that previously, the applicant had carried out proclamation against the deceased only to realize that the property proclaimed did not belong to him. It is deposed that the applicant made an application in Voi P and A No. 50 of 2015- Estate of Edward Lenjo Musamuli seeking renovation of the grant issued and for similar orders, but the court declined to certify the application urgent. It is their contention that the application is only applicable in a situation where the owner of the shares is alive, and does not extend to the estate. They added that with the passing of the Community Land Act, 2016, the applicant and generally all group ranches have been dissolved and are no longer in existence. They urged the court to dismiss the application.

4. The application was canvassed by way of written submissions which were duly filed by the advocates for the parties and in which they basically reiterated the averments in the affidavits in support and against the application.

5. I have considered the application and the submissions made. The application is said to be brought under Order 22 Rule 40 which states:

**“Attachment of share and other property not in possession of judgment – debtor.**

**(1) In the case of-**

**a. Share in the capital or a corporation; or**

**b. Other movable property not in the possession of the judgment-debtor,**

**for the attachment of which specific provision is not made by these Rules the attachment shall be made by a written order prohibiting –**

**(i) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon; or**

**(ii) In the case of the other movable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.”**

6. In this case, it is not in dispute that the applicant is a decree-holder arising from party and party costs in the sum of Kshs.7,434,045/= against the ex-parte applicants herein pursuant to the decision of the Deputy Registrar. The deceased was the 1<sup>st</sup> Ex-parte applicant. It is also not in dispute that pursuant to succession proceedings in Voi P & A Cause No. 50 of 2015 (Formerly Mombasa HCC Succession Cause No.499 of 2014), Everest Matolo Lenjo and Dominy Lenjo Musamuli were appointed as administrators of the estate of the deceased. I have perused the certificate of confirmation of a grant as well as the summons for amendment of the certificates of grant. Among the properties listed in the schedule of distribution on the certificate of confirmation are shares in the name of the deceased in the companies named herein. Since it is not denied that the said shares belong to the deceased, and considering that the decretal sum has not been settled, I see no reason

not to grant the orders sought in the application herein.

7. Given the above discourse, I do allow the application dated 22<sup>nd</sup> October, 2019. I further direct the said companies to dispose of the said shares to realize proceeds to settle the sum of Kshs.7,434,045 together with accrued interests at court rates.

The applicant shall have the costs of this application.

8. Orders accordingly.

**DATED, SIGNED and DELIVERED at MOMBASA electronically by email due to COVID-19 Pandemic this 23<sup>rd</sup> day of September 2020**

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**C.K. YANO**

**JUDGE**

**IN THE PRESENCE OF:**

Yumna Court Assistant

**C.K. YANO**

**JUDGE**