



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 955 OF 2007

**IN THE MATTER OF THE ESTATE OF PETRO AMBUNYA
KUSUI (DECEASED)**

BETWEEN

**DAVID SHIKUKU AMBUNYA 1ST
ADMINISTRATOR
MARISELA AWAY AMBUNYA 2ND
ADMINISTRATOR**

AND

**LEONIDA OSALE MURUBI INTERESTED
PARTY/APPLICANT**

RULING

1. This is an application by the Interested Party in which he seeks an order staying the distribution of the estate of the deceased pending the hearing and determination of Kakamega ME&LC Case No. E002 of 2025 in which he claims 0.0544 hectares out of L.R. No. Butso/Shikoti/2156 belonging to the deceased.
2. It is worth noting that by a Judgement dated 10th April 2019, Musyoka J. revoked the Grant earlier issued to

David Shikuku Ambunya and nullified all transactions based on the Certificate of Confirmation of Grant made subsequently after cancelling the said certificate. The Honourable Judge then appointed the current Administrators and directed that they do file Summons for Confirmation of Grant within 30 days. He directed that any daughter of the deceased who was not interested in the estate do file an affidavit renouncing their rights.

3. Subsequent to the aforesaid Judgement, the Administrators filed Summons for Confirmation of Grant in which the 2nd Administrator deponed that the Interested Party was one of the acknowledged beneficiaries to the estate of the deceased.
4. It is not in dispute that the beneficiaries had sold some portions of their shares to Interested Parties who have extensively developed their portions. By the admission of the two Administrators, some of the purchasers have been on the land for more than 16 years.
5. Despite the earlier acknowledgement of the Interested Party as a beneficiary, the Administrators, vide an application dated 2nd February 2024, prayed for “alteration of the mode of distribution” to reflect a

survey plan and a consent on distribution which was presented to court. The said plan and consent totally omitted the Interested Party hence provoking the present application. This subsequent omission of the Applicant from the list of beneficiaries was not only arbitrary but is a sign of malafides on the part of the 1st Administrator.

6. I have reviewed the application and considered the parties' submissions. I have noted that the Interested Party avers that she purchased the land from the 1st Administrator. The 1st Administrator has been allocated 0.19 hectares in the proposed list of re-distribution whereas the Interested Party's claim at 0.054 hectares would leave him with a net of 0.136 hectares. Without delving into the merits of the Interested Party's claim before the Environment and Land Court, I am convinced that she has met the conditions for stay as the earlier acts of having her name included among the beneficiaries of the deceased herein gave her a legitimate expectation that the portion she had purchased from the 1st Administrator would be excised for her.

7. Following the disclosure that the purchasers have developed their assigned portion of land, the court finds that were the proceedings to continue, the said purchasers may suffer prejudice. The court therefore invokes Rule 73 of the Probate and Administration Rules and orders the stay of these proceedings and stay of execution of the Grant confirmed on 5th August 2022 pending the determination of Kakamega MC E&LC Case No. E002 of 2025.
8. There shall be no order as to costs.

Dated, signed, and delivered at Kakamega, this 3rd day of December 2025.

A. C. BETT
JUDGE

In the presence of:

1st Administrator present in person

Ms. Chesire for the 2nd Administrator

Mr. Munyendo for the Interested Party/Applicant

Mr. Nyikuli for other Purchasers

Court Assistant: Polycap

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