



**In re Estate of Peter Lumiti Mukongolo alias Lumiti Mukongolo (Deceased)
(Succession Cause 786 of 2010) [2025] KEHC 5346 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5346 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 786 OF 2010**

SC CHIRCHIR, J

APRIL 29, 2025

**IN THE MATTER OF THE ESTATE OF PETER LUMITI
MUKONGOLO ALIAS LUMITI MUKONGOLO (DECEASED)**

BETWEEN

PIUS INZIANI LUMITI 1ST PETITIONER

CHRISPINUS SULO LUMITI 2ND PETITIONER

AND

FRANCIS LIYAYI PAUL 1ST PROTESTOR

PHILIPH MAKENA KHASATI 2ND PROTESTOR

RULING

1. What is coming up for determination is the summons for confirmation of Grant dated 8/8/2012. It is supported by the affidavit of the 2nd Petitioner, sworn on 24/8/2012; one affidavit by four of the beneficiaries on 24/8/2012, a further affidavit sworn by the 2nd petitioner on 13/5/2015 and one sworn by the 1st Petitioner on 17/7/2011. The Petitioner's counsel informed the court that the above affidavits was what constituted their evidence for purposes of the summons.
2. There are 2 protest; one by Philip Makena Khazati (2nd protestor) and another by Francis Liyayi Paul (1st Protestor). The 1st protestor is claiming a purchaser's interest while 2nd Protestor is claiming a share in his capacity as a child of the deceased.
3. I have seen an affidavit sworn jointly by four of the beneficiaries namely Anjelin Khaikai Lumiti, Monical Lumiti, Josephine Lumiti and Petronila Lumiti stating that they have relinquished their interest in the estate.



Analysis and determination

4. The first protestor has annexed a sale agreement purporting to be one in relation to a purchase of a portion of land parcel No. Kakamega/Shivakala/596. However, the title number of the property purportedly purchased is not indicated on the sale agreement. It is only the description Kakamega/Shivakala but the number is missing. There is therefore nothing connecting the agreement to the deceased land parcel No. Kakamega/Shivakala/596.
5. Further to the extent that the transaction is being contested by the survivors of the deceased, then this court, as a family court, cannot enforce it. The validity of sale agreement is an issue that touches and concerns land and any issue or transaction that touches on title to land falls under the purview of the Environment and Land court in terms of the provisions of Article 162(2) and 165(5) of *the constitution*. This court can only give effect to liabilities that had crystallized by the time the deceased died. It follows that any third party claims that had not crystallized must first be adjudicated by a court with competent jurisdiction before the family court can give effect to it. Therefore, this court does not have jurisdiction to determine the 1st protestor's interest in the Estate.
6. The 2nd protestor is claiming a share in his capacity as the child of the deceased. In his Affidavit of protest dated 24/10/2019, the 2nd protestor states that he is an heir to the deceased. Indeed, the chief's letter annexed to the petition, the petitioner had listed him as one of the sons of the deceased. He states that later, his name was removed for unknown reasons. He prays that he be granted his rightful share in the estate.
7. When the 1st petitioner petitioned for the Grant, this 2nd protestor was listed as one of the survivors of the deceased. The listing is consistent with the Chief's Letter dated 12/11/2010 attached to the petition, where the chief listed the 2nd Protestor as the son of the deceased.
8. The 2nd Petitioner later sought for revocation of the Grant on grounds that the 1st Petitioner included "Strangers" in the list of survivors. The "stranger" was the 2nd protestor. The matter was compromised by having both petitioner as Administrator. Nothing was said about the "stranger".
9. Upon the filing the present Application, the 2nd Protestor was left out of the list of beneficiaries. There is no reason given as to why this protestor was left out. The Affidavit in support of the summons herein is silent on the status of the 2nd protestor. Further there was no response to the protestor's protest in respect to his assertion that he is a child of the deceased. I will treat the lack of rebuttal to mean that the protestor's assertion that he is a child of the deceased is uncontested.
10. It is therefore my findings that the deceased was survived by the following beneficiaries;
 - a. Hesborn Okanga Lumiti
 - b. Pius Inziani Lumiti
 - c. Vincent Lumumba Lumiti
 - d. Philip Makena Khasatri
 - e. Chrispnus Sulo Lumiti
 - f. Anjelin Khakai Lumiti
 - g. Monica Ikhungu Lumiti
 - h. Josephine Inzeyelo Lumiti



- i. Petrolina Shioko Lumiti
11. I have seen an Affidavit sworn by Anjelin Khaikai Lumiti, Monica Ikhungu Lumiti, Josephine Inzeyelo Lumiti and Petronila Shioko Lumiti denouncing their share in the estate and supporting the mode of distribution proposed by the petitioner.
12. The only property available for distribution is given as Kakamega/Shivakala/596. A certificate of official search carried out on 28/7/2010 shows that the land parcel measures about 2.2 hectares (5.44 acres).
13. None of the contestants has mentioned whether the deceased was survived by a spouse. Consequently, the appropriate mode of distribution is the one under Section 38 of the *Law of Succession Act*. The section provides as follows: “Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”
14. In conclusion I hereby proceed to make orders as follows;
- a. The Grant of Letter of Administration issued on 28/9/2011 is hereby confirmed.
- b. The protest by the 1st protestor is hereby struck off.
- c. Land Parcel No. Kakamega/Shivakali/596 shall go to ; Hesborn Okenga Limuti, Pius Inziani Lumiti, Vincent Lumumba Lumiti, Philip Makena Khasati and Chirspnus Sulo Lumiti in equal shares of 1.088 acres each.
- d. The matter to be mentioned on a date to be given during the delivery of this ruling for purposes of confirming the completion of submissions.
- e. Right of Appeal – 28 days

DATED, SIGNED AND DELIVERED VIRTUALLY, AT ISIOLO ,THIS 29TH DAY OF APRIL 2025

S. CHIRCHIR

JUDGE.

In the presence of :

Godwin- Court Assistant

Ms Kadenyi for the 2nd protestor

