



In re Estate of Teresina Etambo Lukhumwa (Deceased) (Succession Cause 914 of 2011) [2025] KEHC 7187 (KLR) (29 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7187 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 914 OF 2011**

PJO OTIENO, J

MAY 29, 2025

**IN THE MATTER OF THE ESTATE OF THE LATE TERESINA ETAMBO
LUKHUMWA (DECEASED)**

BETWEEN

TIMOTHY MISANGO LUKHUMWA ADMINISTRATOR

AND

RICHARD LOKENI SHAPAYA OBJECTOR

RULING

Application

1. Before this court is chamber summons application dated 2nd day of February 2024 brought under Sections 47 & 49 of the *Laws of Succession Act*, Rule 44 of the *Probate and Administration Rules* & Order 9 rule 9 of the *Civil Procedure Rules 2010*. The Applicant in the application seeks orders, that;
 - a. spent.
 - b. spent
 - c. spent
 - d. Pursuant to the Orders made on the Ruling and or Orders made on 23rd December 2022 by Hon. Justice W M. Musyoka this Honourable Court be pleased suo moto to review, vacate and set aside and or discharge the earlier orders made on 1st February 2022.
 - e. This Honourable Court be pleased to empower and direct the County Land Registrar Kakamega to cancel entries number 3 made on 30th June 2022 in respect of land parcel known as Isukha/Shirere/7624 and Isukha/Shirere/7625 respectively reverting the same to the original title and number Isukha/Shirere/535 in the name of the deceased herein Teresina



Etambo Lukhumwa and the Certificate of Confirmation of a Grant made on 12th February 2020 be reinstated and the said new titles Isukha/Shirere/7624 and Isukha/Shirere/7625 respectively issued on the 17th February 2022 to the beneficiaries to be declared legally valid.

- f. That the cause of this Application be in cause.
2. The grounds in support of the Application are found in the face of the Application and reiterated in the supporting affidavit. The deponent avers to have been granted Letters of Administration intestate on 12th June 2019 which was subsequently confirmed on 12th February 2020 with a certificate of confirmation being issued for the same. He thereafter proceeded to register, process and transmitted new title numbers Isukha/Shirere/7624 and 7625 created from the original title number Isukha/Shirere/535.
 3. That following the revocation application by the Respondent dated 31st January 2022, vide ruling dated 23rd December 2022 the court having found to be lacking jurisdiction to entertain the Application, directed that the Respondent to file his claim at the appropriate court and the same be determined within one year. The court however declined to revoke the grant but suspended its confirmation orders while awaiting the outcome of the suit that was to be filed by the Respondent.
 4. It is the Applicant's case that the Respondent failed to comply with the orders made in the Ruling of 23rd December 2022 requiring him to file the suit and be determined within one year. He asserts that the matter was mentioned on 20th December 2023 upon expiry of one year and where the ordered that any cautions lodged against the title be removed and court file be closed.
 5. The Applicant contends to have then extracted the said order made on 20th December 2023, presented it to the County Land Registrar Kakamega for implementation but it was advised for need of further order for deletion and/or cancelation of entries number 3 made in respect of land parcel known as Isukha/Shirere/7624 and 7625 respectively partitioning the original title number Isukha/Shirere/535 registered in the name of the deceased.
 6. He presents to have had completed the process of transmission and acquired new titles registered in the names of the legitimate beneficiaries and new title deeds in respect of parcels Isukha/Shirere/7624 and Isukha/Shirere/1725 issued accordingly and original title number Isukhashirere/535 closed. He alleges not to have been aware of the cancellation of the said title numbers Isukha/Shirere/1724 and 1725 at the time the time of issuance of orders of 20th December 2023 until when he obtained certified copies of the register for the two parcels of land.
 7. The Applicant further indicated that the Objector has not moved the Environment and Land Court as directed or has he appealed against the Ruling and or Orders made on 23rd December 2022 and as such it is the interest of justice for the sought orders be granted for the conclusion of the matter.

Response

8. In response to the application, the objector filed a replying affidavit dated 1st March 2024 in which he contends that the applicant is not entitled to the orders sought in the application for failing to disclose to the court that he has already filed Kakamega CMC L&E No 177 of 2023 (O.S) in compliance with the orders of Justice William Musyoka.
9. He avers to have bought 0.2 18 Ha of land parcel number Isukha/Shirere/535 from the deceased and has been in possession of the said land parcel to date cultivating in it horticultural crops and maize. He indicates that there are boundary features separating his portion of land from the Applicant's and that



the Applicant's intent is to grab his portion of land and sell the same to third parties before my case at the land and environment court is heard and determined.

10. It is for this that he prays that the deceased's estate should not be distributed until his case in the land and environment court is heard and determined and urges the court to find the application by the Applicant unmerited.

Analysis and Determination

11. The court has duly considered the orders sought in the Application, the grounds in support thereto and the response by the Objector. The fulcrum and foundation of the application are the proceedings and orders made in Chamber summons dated 1st February 2022 and the determination dated 23rd December 2022. In that application, the sought orders for revocation of the of the grant of letters of administration issued to the Applicant on 18th January 2019 and the subsequent certificate of confirmation issued on 10th February 2020.
12. His grounds in support of the orders for revocation were that he had purchased 0.218 Ha of portion of Isukha/Shirere/535 from the deceased and that the Applicant being aware of his interests proceeded to obtain the grant without informing other rightful beneficiaries to the estate.
13. In the ruling the Court determined and held that it lacked the jurisdiction to entertain the said Application in the succession proceedings. It thus directed the Respondent to file his claim at the appropriate court, either Environment and Land Court or empowered Subordinate Courts and the same be determined within one year. Further, the court declined to revoke the grant in question but suspended the confirmation orders while awaiting the outcome of the suit to be filed by the Respondent.
14. In the instant, the Applicant's contends that when the matter was mentioned on 20th December 2023 upon expiry of one year duration granted by court to the Respondent, the Respondent had not complied with the court orders made on 23rd December 2022. For that reason, it is contended that the period given to the respondent to pursue his rights in the other court had lapse hence there was no need to keep holding distribution in abeyance.
15. Having perused the records of the file including the response by the respondent, particularly, the annexed pleading by the Respondent, the court notes that suit, Land and Environment Case No 177 of 2023 (OS), was filed on 26th July 2023. It was filed within the timelines set by the court. It is thus incorrect to assert that the respondent never complied with the court orders as to filling the claim.
16. While it is true that the orders obligated the matter to be prosecuted within one year, there is no material before the court to show that the respondent has been indolent or lackluster in the prosecution of the matter. The court equally appreciates that once a party files a matter in court, he does not singularly retain control the pace at which the matter must be heard. A litigant may only push for the matter to be expedited but the taking of dates is not solely on the parties but the court. To this court, the respondent has done what was within his control and ought not be faulted for the matter remaining unheard.
17. On the other note, the court did, in the ruling, appreciate that the respondent having allegedly bought the land from the deceased, and taken possession, was a person interested in the estate. I read the judge to have desired that the claim be dealt with at the appropriate court before the estate can be distributed. The court discerns that to be the only way of not only serving justice to the parties as well as meeting the efficient utilization of the judicial resource in time. To allow, the orders sought would be to merely scratch the ground and exhibit the haste at closing a court file when that may not last long. The court



discerns no prejudice to await the administrator if the land court is granted the chance to determine the land question so that the probate court only distributes the free estate of the deceased.

18. There are also orders of 1.2.2022 which the applicant seeks to be reviewed so as to realize the intendment of the orders of 23.12.2023. the upon perusal of the application upon which the said orders issued take the view that the reference to prayer 3 must have been inadvertent. Inadvertent in that prayer three was the substantive prayer upon which the court reserved its directions for the 23.2.2022. in any event, that is the same prayer the court adverted to in the ruling of 23.12.2023 when it said that it would not hear the application for revocation for being disguised for land dispute. The court opts to move ex debito justitiae and clarifies that there is no order in the file revoking the grant because the application for revocation is yet to be heard.
19. On the same note, the reference made to closure of the court file on the proceedings of 20.12.2023, was an address by the applicant. It was not a court order. The court file remains open for purposes of hearing the Summons for Revocation of Grant dated after the suit at the Land Court shall have been determined. The parties are however urged to cooperate so that the determination of the suit is expedited.
20. It follows that the court finds no merit in the application, which is therefore dismissed.
21. The court makes no orders as to costs.

DATED AND SIGNED THIS 29TH DAY OF MAY, 2025.

PATRICK J O OTIENO

JUDGE

DATED, SIGNED AND DELIVERED AT KAKAMEGA, THIS 29TH DAY of MAY, 2025.

S. MBUGI

JUDGE

In the presence of:

No appearance for parties

C/A: Agong'a

