



REPUBLIC OF KENYA



**In re Estate of Gilbert Osundwa Kadima (Deceased) (Succession Cause
552 of 2013) [2024] KEHC 831 (KLR) (31 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 831 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 552 OF 2013
SC CHIRCHIR, J
JANUARY 31, 2024**

IN THE MATER OF THE ESTATE OF GILBERT OSUNDWA KADIMA – DECEASED

RULING

1. What is coming up for determination is the application dated January 31, 2022. it seeks for the following orders; -
 - i. That the orders made on September 28, 2020 closing this succession cause be set aside and/or vacated
 - ii. That this succession cause be reopened paving way for distribution of the deceased's estate.
 - iii. That costs of this application be in the cause.It is supported by the affidavit of Herman Wamukoya Osundwa, the applicant.
2. The respondent filed a response, opposing the application and parties were directed to file submission in respect of the Application
3. The respondent filed submissions on March 29, 2023 but curiously the submission do not address the subject Application. Admittedly the application is premised on *inter alia* section 74 of the [Law of Succession Act](#), but the respondent seemed to have focused on the section cited only, while ignoring the substance of the Application. Suffice to state that such minor omissions, such as citing the wrong sections or provisions of the law, must not be given undue attention at the expense of substantive justice.
4. The applicant on the other hand did not file submissions.
5. The Application seeks for the vacation of the orders made on September 28, 2020 and re-opening of this case file.



6. The orders of September 28, 2020 were as follows:

“As the Estate has been distributed upon the grant being confirmed, the orders in the motion dated July 28, 2020 are not available in this cause. This cause has been finalized. Let the applicant move the Environment and Lan Court for the orders sought in the motion. The Deputy Registrar should cause this Succession Cause to be closed”

7. In effect the judge did not close the file. He simply gave directions to the Deputy Registrar to close the file. It is apparent the directions to the Registrar arose from information given to the court by one of the counsels to the effect that the Administration of the Estate had been completed. This was however a misrepresentation of facts as a perusal of the record, again, shows that Title No. North wanga / Namamali/ 544 is yet to be shared out. This is clearly evident from the Applicant’s supporting Affidavit to the present Application and the replying affidavit dated 11.5.2022 by the Respondent.
8. Nevertheless, the record shows that the Registrar has never acted on the Judge’s directions. Consequently, this file has never been closed. The application is therefore misplaced. It is not necessary.
9. Further having emerged that land parcel No. North/Wanga/Namamali/544, has not been distributed to the beneficiaries this cause cannot be said to have been concluded.
10. Pursuant to section 73 of the Law of Succession Act, I direct that this matter be mentioned on a date to be given on the date of this ruling for parties to address the court on the way forward in respect to Title No. No. North Wanga/Namamali/544.
11. In conclusion:
- a. The Application dated January 31, 2020 is hereby dismissed
 - b. This matter to be mentioned on a date to be given at the date of the delivery of this ruling for further directions.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 31ST DAY OF JANUARY, 2024

S. CHIRCHIR

JUDGE.

In the presence of;

Rono- Court Assistant

No appearance by the parties

