



REPUBLIC OF KENYA



**In re Estate of Situndo Otsieno (Deceased) (Succession Cause
18 of 2016) [2024] KEHC 2611 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2611 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 18 OF 2016**

WM MUSYOKA, J

MARCH 15, 2024

IN THE MATTER OF THE ESTATE OF SITUNDO OTSIENO (DECEASED)

RULING

1. The certificate of death on record, serial number 693967, dated 24th September 2003, indicates that the deceased herein, Situndo Otsieno, died on 2nd April 1970. I see a letter on record, dated 25th November 2003, by the Senior Chief of Marachi East Location. It identifies the individuals that the Chief considered to have survived the deceased, being 1 son and 2 daughters, named as Samuel Wafula Sidundo, Mary Atsieno and Florence Auma Wekesa. The deceased is said to have died possessed of Marachi/Elukongo/1293.
2. Representation to the estate was sought by Florence Auma Wekesa, in her capacity as daughter of the deceased. She listed the survivors of the deceased as the 3 individuals listed in the letter by the Chief. Marachi/Elukongo/1293 is listed as the property that the deceased died possessed of. Letters of administration intestate were made to Florence Auma Wekesa, on 17th April 2007, and a grant was duly issued, dated 5th November 2007. I shall refer to her hereafter as the administratrix.
3. A summons for confirmation of that grant, dated 26th September 2008, was filed herein on 6th October 2008, by the administratrix. She proposed distribution of Marachi/Elukongo/1293, unevenly, so that she, Florence Auma Wekesa, got 6 hectares, Samuel Wafula Sidundo 10 hectares, and Mary Atsieno 4 hectares. The grant was confirmed on those terms on 19th December 2008, and a certificate of confirmation of grant was duly issued, dated 21st January 2009. That certificate was subsequently rectified, and an amended certificate of confirmation duly issued, dated 21st July 2015, to indicate the shares of the beneficiaries in acres, rather than hectares.
4. On 22nd December 2011, the administratrix brought a summons, dated 15th December 2011, against Francis Oduor and Silvester Muya Otsieno. They owned or occupied parcels of land adjacent to Marachi/Elukongo/1293, and were accused of interfering with or encroaching on the estate property, and it was said that that was making it difficult for the administratrix to transmit the estate. There were accusations of intermeddling.



5. The administratrix filed another summons, dated 5th May 2015, seeking a variety of orders, which included an order to summons some individuals to appear in court and state their claim to Marachi/Elukongo/1293; certain declarations as to who was entitled to Marachi/Elukongo/1292, 1293 and 1294; orders to correct names of the deceased; an order for a surveyor to confirm the correct boundaries as between Marachi/Elukongo/1292, 1293 and 1294; damages to be paid by named individuals for intermeddling with the Marachi/Elukongo/1293; and an order for the eviction of the intermeddlers.
6. Patrick Keya Omondi then filed a summons, dated 20th April 2016, where he sought the setting aside of the certificate of confirmation of grant issued to the administratrix; an order to prohibit the sale of Marachi/Elukongo/1293; an order to prohibit the subdivision of Marachi/Elukongo/1293; deposit in court of monies allegedly raised from mining of murram from Marachi/Elukongo/1293; deposit in court of monies allegedly raised from the lease of Marachi/Elukongo/1293 to an unknown person; and an order prohibiting squatters and eviction of persons who are on Marachi/Elukongo/1293. He claimed that the survivors of the deceased were himself, Joseph Muya Keya and Margaret Philipo Situndo, a spouse of the deceased. To that application the administratrix swore an affidavit, on 22nd May 2017. She asserted that the deceased was her father, who had only 1 wife, her mother, Teresa Khisa. She dismissed Patrick Keya Omondi and his co-applicants as strangers.
7. The application, dated 20th April 2016, was handled by Kiarie J, who delivered a ruling thereon, on 17th June 2018. He dismissed the claim, and affirmed that Marachi/Elukongo/1293 belonged to the deceased herein. The court, however, found that Oda Situndo, was a beneficiary of the estate. The court directed that the distribution stated in the amended certificate of confirmation of 21st July 2015 could not stand, and directed the parties to file fresh proposals on distribution, within 3 months.
8. In reaction to the directions of 17th June 2018, the administratrix filed a Motion, dated 9th October 2018, asking that the amended certificate of confirmation of 21st July 2015 be amended afresh, to include Oda Situndo, and that the 20 acres, which made up Marachi/Elukongo/1293, be shared out so that the administratrix took 6 acres, Samuel Wafula Situndo 10 acres, Mary Atieno Wekesa 2 acres and Oda Situndo 2 acres. That application was placed before Kiarie J, on 29th January 2019, and was allowed, a certificate of confirmation of grant, of 29th January 2019, was generated.
9. Wilfrida Otieno Ngesa then filed a summons, dated 9th January 2023, seeking to substitute Florence Situndo Wekesa, on grounds that she had passed on, and seeking to her the certificate of confirmation of grant of 29th January 2019 amended to reflect her as administratrix. Wilfrida Otieno Ngesa claimed to be a sister of the dead administratrix, and alleged that the dead administratrix had not administered the estate well. Samuel Wafula Situndo responded to that application, vide his affidavit sworn on 6th March 2023. He avers that Wilfrida Atieno Ngesa was also known as Oda Situndo. He avers that the estate was distributed on 29th January 2019. He appeals that the grant be issued to Samuel Wafula Situndo, Mary Atieno Wekesa and Oda Situndo alias Wilfrida Otieno Ngesa. The application of 9th January 2023 was disposed of by consent on 13th July 2023, when new administrators were appointed, being Oda Situndo Otieno, Samuel Wafula Situndo and Mary Otieno Wekesa. A grant of letters of administration intestate was issued to them, dated 25th July 2023. It was directed that a fresh summons for confirmation of grant be filed.
10. Samuel Wafula Situndo filed that summons for confirmation of grant, which he dated 20th July 2023. He proposes distribution of the estate between himself, Mary Atieno Wekesa and Wilfrida Otieno Ngesa, at the ratio of 12 acres, 4 acres and 4 acres. Wilfrida Otieno Ngesa filed a protest affidavit to it, sworn on an unknown date, but filed herein on 19th December 2023, largely raising the issues that Kiarie J had determined in the ruling of 17th July 2018.



11. When the application, dated 13th July 2023, was placed before me, on 24th October 2023, for hearing, I raised concern that there were confirmation orders made on 29th January 2019 by Kiarie J, and a certificate of confirmation of grant had been issued on the basis of those orders. On 22nd November 2023, Wilfrida Ngesa stated that the property ought to be shared equally between the beneficiaries. She said that the late administratrix had died without children. I directed the parties to file written submissions, which was done. I have read through the said submissions, and I have noted the arguments made.
12. On 29th January 2019, the summons for confirmation of grant was placed before Kiarie J, and was allowed. After the administratrix passed on, Wilfrida Ngesa sought to substitute her as such, and, in the end, an order was made appointing the 3 surviving beneficiaries as administrators, on 13th July 2023. I made a further order for a fresh application for confirmation of grant. One has been filed, and it is the one that I should be determining in these proceedings. However, I realise that the directions for filing of a fresh summons for confirmation of grant were erroneous. The death of an administratrix, holding a confirmed grant, should not trigger, upon new administrators being appointed to replace her, a fresh distribution of the estate. The grant herein was confirmed on 29th January 2019. No one has appealed against the confirmation orders of 29th January 2019. No one has sought review of those orders. There is no basis, therefore, for the re-visit of those orders, by way of making fresh distribution orders. The new administrators should transmit the estate as per the distribution of 29th January 2019, with the share due to the late administratrix devolving to her estate, to be distributed in a succession cause initiated in her name.
13. The application, dated 13th July 2023, is hereby struck out, for its filing was completely needless. The order directing its filing, made on 13th July 2023, is hereby vacated. The estate shall be transmitted as per paragraph 12 above. The matter shall be mentioned after 6 months, on 24th September 2024, to confirm whether the estate has been transmitted, so that the court can close its file. It is so ordered.

RULING DATED, SIGNED AND DELIVERED AT BUSIA THIS 15TH DAY OF MARCH 2024

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Ms. Wilfrida Otieno Ngesa alias Oda Situndu, in person.

Advocates

Mr. Odera, instructed by Odhiambo Odera & Associates, for Samuel Wafula Situndo and Mary Atieno Wekesa.

