



REPUBLIC OF KENYA



In re Estate of Luka Kuta Shay alias Luka K. Shayo - Deceased (Succession Cause 446 of 2014) [2024] KEHC 4128 (KLR) (25 April 2024) (Ruling)

Neutral citation: [2024] KEHC 4128 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 446 OF 2014**

SC CHIRCHIR, J

APRIL 25, 2024

**IN THE MATTER OF THE ESTATE OF LUKA
KUTA SHAY ALIAS LUKA K. SHAYO (DECEASED)**

IN THE MATTER OF

SELINA NAMBUYE KUTA PETITIONER

RULING

1. What is coming up for determination is the summons dated 8/1/2024 and filed on the same date by the Administrator of the Estate. It seeks a review/amendment of the of 3rd July 2018 confirming the Grant. The application is supported by the Applicant's affidavit as well as another affidavit sworn by one Sammy Soita, who identifies himself as one of the beneficiaries of the Estate.
2. It is the Applicant's case that one of the properties namely parcel No. North Kabras/Surungai/1411 was left out of the succession process. She further says that one of the beneficiaries namely, Sammy Soita, ought to have gotten a share of 0.2 hectares from parcel No. Kakamega/Surungai/1409 instead of the 0.5 hectares, appearing on the certificate of confirmation of Grant. This position is confirmed by the said beneficiary through his affidavit sworn on 8/1/2024.
3. It is deponed that the rest of the beneficiaries are not opposed to the said changes. A consent to that effect dated 8/4/2024 is on record

Determination

4. This is an application for review. Review is governed by Section 45 of the *civil procedure rules* which is imported to the *law of succession act* pursuant to Rule 63 of the *Probate and Administration rules*.
5. According to the Applicant, one asset namely North Kabras/Surungai/1411 was left out of succession proceedings. She also wants the portion given to Sammy Soita one of the beneficiaries be reduced from 0.5 hectares to 0.2 hectares. On this prayer, the reasons for the proposed change are not given. I note



however that the said beneficiary has sworn an affidavit to the consenting to the reduction of his share. I further take note of the fact that the rest of the beneficiaries have consented to the changes.

6. On the inclusion of North/Kabras/Surungai/1411, I have seen a certificate of official search for North/Kabras/Surungai/1411. The same is registered in the name of the deceased.
7. I have further perused the application for the confirmation of grant file on 4/6/2018 as well as the certificate issued and noted that the above state parcel was indeed missing from the list of the properties.
8. In view of the foregoing, I am satisfied that the application for review is warranted and I now proceed to make the following orders:
 - a). Title number North Kabras/Surungai/1411 be included in the assets of the Estate, to go to Selina Nambuye to hold it on life interest.
 - b). Sammy Soita's share in Title No. Kakamega/Surungai/1409 to be reduced to read 0.2 hectares instead of 0.5 hectares.
 - c). The certificate of confirmation of grant issued on 3/7/2018 to be amended accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI, VIA MICROSOFT TEAMS THIS 25TH APRIL 2024.

S. CHIRCHIR.

JUDGE.

In the presence of:

Godwin- Court Assistant

