



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**SUCCESSION CAUSE NO. 249 OF 1999**

**IN THE MATTER OF THE ESTATE OF LIGARE MUKWANA**

**J U D G M E N T**

1. The Present Administrator in this succession suit comes before the Court seeking a Judgment on the Summons for Confirmation of Grant dated and filed on 16<sup>th</sup> November 2020. That Application came before the Court previously and the Court Ruled on the Summons on 27<sup>th</sup> July 2021 – dismissing the Application and directing the Parties to produce evidence to support the distribution set out therein.

2. It should be explained that the Deceased passed away on 24<sup>th</sup> February 1969, He was survived by several sons including Alphonse Ajesa Ligare, Edward Ligare Shifokwa, Joseph Likare Shiboka. The original Petitioner and Administrator was Aphone Ajesa Ligare. He passed away around December 2017. It seems he was replaced by Ernest Mwisaiyi Edward who is the grandson of the Deceased. In his Affidavit, it is that Grandson who depones that the Deceased “was survived by” the following

- (i) Alphonse Ajesa Ligare
- (ii) Ernest Mwisaiyi Edward
- (iii) Joseph Likare Sivonga
- (iv) Malova Shivonga
- (v) Juliana Shivonga

It also names two “dependants” who are said to have purchased part of the Estate without the benefit of the certificate of confirmed grant; Naomi Matsitsa and Odoliya Khavetsa Isiaho. The Petition also incorrectly names two individual as the Children of the Deceased. They are Ernest Mwisaiyi Edward, who is a grandchild and Juliana Shivonga, who is a daughter-in-law. In the circumstances, the assertions contained in the Petition, the Summons and the Supporting Affidavit are factually incorrect.

3. The Parties are not represented. In the circumstances, the Court gave directions for the filing of further evidence. Unfortunately, the evidence filed raises more questions than it answers. There is on the file a Letter from the Chief addressed to the “Chief Magistrate”. The “beneficiaries” listed include the alleged purchasers. There is also a “Land Purchase Agreement” entered into by Alfonse Ajesa Ligare but the buyers named are not those now before the Court, namely Stephen Litonde Muhati. That Agreement also records that it will be subject to the succession and completion of payment. The Succession is not complete and there is no evidence before the Court of what payments whether the payments were completed. The Agreement does record that Naomi Muhati is the wife of Stephen Litonde.

4. In the circumstances, the Court is faced with a predicament, should it proceed on incomplete evidence or allow the Parties to start afresh. The Directions given on 27<sup>th</sup> July 2021 were intended to help the Parties to place before the Court cogent and persuasive evidence supporting their case. They have not done so. They do not have legal representation and it may be that the Administrator is unable to follow the rigours of litigation on his own. It is also clear that the Alleged Buyers did not get good title and they were aware of that.

5. The Court has come to the conclusion that the Administrator is in need of assistance. In the circumstances, the Summons for Confirmation of Grant is dismissed. The Letters of Administration issued on 2<sup>nd</sup> October 2017 are revoked.

6. In its place, the Public Trustee be and is hereby appointed as the Administrator of the Estate of Ligare Mukwana. The Public Trustee shall make the necessary inquiries and file a summons for confirmation of grant within 60 days of the date hereof.

7. This Order to be extracted and served on the Public Trustee by the High Court Registry

**DATED 31ST JANUARY 2022**

**Order accordingly,**

**FARAH S. AMIN**

**JUDGE**

**DATED AND SIGNED THIS THE 31ST DAY OF JANUARY 2022 IN KAKAMEGA HIGH COURT.**

**JUDGE**

**DATED, SIGNED AND DELIVERED IN KAKAMEGA HIGH COURT ON 22ND DAY OF MARCH 2022.**

In the Presence of:

Court Assistant:

Administrator:



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