



**In re Estate of Flora Namwacha Baluma alias Mrs. Baluma Shanina  
(Deceased) (Succession Cause 28 of 2010 & 379 of 2011 (Consolidated))  
[2024] KEHC 14976 (KLR) (29 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14976 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
SUCCESSION CAUSE 28 OF 2010 & 379 OF 2011 (CONSOLIDATED)**

**DK KEMEL, J**

**NOVEMBER 29, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE FLORA  
NAMWACHA BALUMA ALIAS MRS. BALUMA SHANINA**

**BETWEEN**

**ISAAC MUCHUMA ..... PETITIONER**

**AND**

**JOHN BARASA BALUMA ALIAS JOHN FLORA ..... OBJECTOR**

**RULING**

1. The late Florah Namwacha Baluma alias Mrs. Baluma Shanina, died on 28<sup>th</sup> May 2002. Under High Court Succession Cause No. 379 of 2011, the Objector herein proceeded to Petition for grant of letters of administration intestate as the eldest son of the late Florah Namwacha Baluma alias Mrs. Baluma Shanina. He proceeded to file in Court a consent vide form 38R indicating that Michael B. Buluma, Patrick Barasa Buluma, Maurice N. Buluma and Richard M. Barasa gave their consent towards the institution of the succession proceedings and the appointment of the Objector herein as an Administrator of the estate of the late Florah Namwacha Baluma alias Mrs. Baluma Shanina.
2. The Objector herein filed a form P&A 5 wherein he indicated that the late Florah Namwacha Baluma alias Mrs. Baluma Shanina was survived as follows: John Barasa Baluma alias John Flora; Michael Barasa Buluma, Patrick Barasa Buluma, Maurice Nyongesa Buluma; Richard Masinde Barasa; Salome Namalwa; Cicilia Nasimiyu; Rosenah Nekesa and Mary Nanjala. He further indicated that the assets are as follows: Bungoma/Tongaren/238; coffee plantation; 200 stems of trees; banana plantation and semi-permanent house, and that the liabilities of the late Florah Namwacha Baluma alias Mrs. Baluma Shanina is one acre of land to grandson Gabriel.



3. On 6<sup>th</sup> March 2012, this Court issued the grant of letters of administration to the Objector herein. Subsequently, he proceeded to file the respective summons for confirmation of grant under Section 71 (3) of the Succession Act and that a certificate of confirmation of grant was issued on 5<sup>th</sup> February 2013.
4. The late Buluma Shanina died on 4<sup>th</sup> October 2007. Under High Court Succession Cause No. 28 of 2010, the Petitioner herein vide form P&A 5 filed in Court on 27<sup>th</sup> January 2010, the Petitioner herein petitioned this Court for the grant of letters of administration intestate with regard to the estate of the late Buluma Shanina wherein they indicated that she died on 4<sup>th</sup> October 2007. He indicated that the late Buluma Shanina was survived by one son, Isaac Muchuma; that her estate comprised of one asset, LR.Bungoma/Tongaren/238; that the liabilities of the estate are: Daniel Ngoje Abungu-4 acres, Ringo Fred Kubungile Masibi-5 acres and Martin Wsike Wopicho-2 acres.
5. On 29<sup>th</sup> September 2010, this Court issued grant of letters of administration to the Petitioner herein and that the Petitioner proceeded under Section 71 (3) of the Succession Act to file summons for confirmation of the said grant.
6. Vide summons for revocation or annulment of grant dated 1<sup>st</sup> November 2010 and filed in Court on 8<sup>th</sup> November 2010, the Objector moved this Court seeking to have the grant issued to the Petitioner herein on 29<sup>th</sup> September 2010, be revoked as the same had been obtained fraudulently.
7. On 16<sup>th</sup> April 2013, this Court issued orders that High Court Succession Cause No.379 of 2011 be brought before the Court for purposes of ascertaining its relationship to High Court Succession Cause No. 28 of 2010 and to confirm if they do relate to the same estate property.
8. On 4<sup>th</sup> September 2013, this Court noted that after keen perusal of the High Court Succession Cause No.379 of 2011, the matter relates to High Court Succession Cause No. 28 of 2010 as they are based on the estate of the late Florah Namwacha Baluma alias Mrs. Baluma Shanina and proceeded to consolidate them for any future reference.
9. Vide summons dated 31<sup>st</sup> January 2020, the Objector moved this Court seeking orders that the District Land Settlement Officer Bungoma North District be directed to release Discharge for land parcel No. Bungoma/Tongaren/238 and that he/she duly executes the form for transfer in favour of Flora Namwacha Baluma alias Mrs. Baluma Shanina.
10. On 1<sup>st</sup> February 2021, parties consented to the following as their identified issues for deliberation:
  - a. Who is the allottee of land parcel No. Bungoma/Tongaren/238?
  - b. Whether the said allottee is dead and if yes, when did he/she die?
  - c. Who are the dependants of the allottee?
11. The matter was set down for hearing, but on 5<sup>th</sup> August 2022, the Court found it prudent to refer it to Mediation and on 15<sup>th</sup> December 2022, during mention before the Deputy Registrar High Court, it was noted that based on the filed Mediation report, the parties herein did not reach any settlement and that the matter was referred back to this Court for deliberation. The matter was thus set down for hearing by way of viva voce evidence.
12. On 17<sup>th</sup> April 2023, OB-PW1 John Barasa Baluma alias John Flora testified that he is a resident of Tongaren, a farmer by profession and that he specifically resides on land parcel No. Bungoma/Tongaren/238. At his request, this Court proceeded to adopt his recorded witness statement dated 27<sup>th</sup> April 2021 and his further statement dated 30<sup>th</sup> June 2021 as his evidence in chief. He also relied on his list of documents (OB. EXH 1-24) dated 22<sup>nd</sup> June 2021. According to him, he knows the



Petitioner but does not know his father. That the Petitioner herein started tussling over the land parcel No. Bungoma/Tongaren/238 with him in the year 2007 and that he referred to Buluma Wasiuma in the Bungoma CMCC No. 503 of 2007, wherein orders were issued directing the Petitioner to exhume the body of Buluma Wasiuma and/or the body of the stranger buried on land parcel No. Bungoma/Tongaren/238. He told the Court that the Petitioner herein introduced himself as the brother to the deceased but before this Court he introduces himself as the son of the deceased allegedly known as Buluma Shanina alias Baluma Shanina. He told the Court that he has been in occupation of land parcel No. Bungoma/Tongaren/238 since 1965 together with his late mother, the deceased herein and that the Petitioner has not lived on the said land. He told the Court that the deceased herein died in the year 2002.

On cross-examination, he told the Court that land parcel No. Bungoma/Tongaren/238 was duly allocated to his late mother, Florah Namwacha Buluma alias Mrs. Baluma Shanina by the settlement officer and that the allotment agreement shows the name of the allottee. He testified that Buluma Shanina signed the allotment dated 22<sup>nd</sup> October 1965 and that a suit was filed in Kimilili in the name of Baluma Shanina. He told the Court that in 1973, the name Mrs. Baluma Shanina was still in existence and that the settlement officer knows best who owns the parcel and that the legal receipt dated 22<sup>nd</sup> October 1965 indicates the name Mrs. Baluma Shanina. He told the Court that his father died on 22<sup>nd</sup> October 1965 and maintained that the land was allocated to his mother in 1965.

On re-examination, he told the Court that land parcel No. Bungoma/Tongaren/238 was allocated to Mrs. Baluma Shanina who also went by the name Flora Namwacha. He reiterated that his late mother's thumb printed the allotment agreement as she also provided the names of her children to Court in Kimilili. He told the Court that prior to 1973 they still bore the same names just like the other children.

13. OB-PW2 Richard Masinde Barasa told the Court that he is a teacher by profession and that OB-PW1 herein is his eldest brother. At his request, this Court proceeded to adopt his recorded witness statement dated 21<sup>st</sup> June 2021 as his evidence in chief. According to him, he resides on land parcel No. Bungoma/Tongaren/238 and that his brother John Barasa Baluma took up the name John Flora because they did not reside together with their father and that their land and home is generally known as Flora. He told the Court that he was born on 12<sup>th</sup> August 1964 and that in 1965 his mother and family started residing on land parcel No. Bungoma/Tongaren/238. He told the Court that he is aware that the land parcel No. Bungoma/Tongaren/238 is registered under the name of his late mother together with her sons namely John Barasa Baluma alias John Flora, Patrick Masinde, Maurice Nyongesa, Michael Wekesa Baluma who used to contribute money and pay a loan in the name of Baluma Shanina as his mother who booked the land did so under the name Mrs. Baluma Shamina.
14. It was his testimony that in the year 2006, the loan was cleared and the Settlement Fund Trustee prepared a discharge of charge in the name of Baluma Shanina and informed his elder brother (OB-PW1) to proceed to the Land Settlement and Adjudication Office to collect the same, but at the point of collection they discovered that an objection had been lodged. He told the Court that all correspondences from Settlement Fund Trustees were addressed to their late mother Mrs. Baluma Shanina alias Flora Namwacha Baluma during her lifetime and that OB-PW1 took over after the demise of their mother.
15. He told the Court that the Petitioner herein is nothing but an imposter who wishes to take advantage of the discrepancies in names on record to claim their land and that he is using the discrepancy "Baluma" and "Buluma" to create a mountain out of an anthill. He told the Court that the Petitioner in Bungoma CMCC No. 503 of 2007 indicated that the remains of the person buried on land parcel No. Bungoma/Tongaren/238 were that of his late brother whom he referred to as Buluma Wasiuma



and never Baluma Shanina alias Buluma Shanina and that it is only during these proceedings that he is referring to the deceased as Baluma Shanina alias Buluma Shanina.

16. He told the Court that in 2007, the Petitioner brought a body of a stranger whom they later discovered to be named Buluma Wasiuma with a Court order and that he buried the said body on their land. The same body was later exhumed after the Court order was reversed. He told the Court that prior to 2007 they have been peacefully living on land parcel No. Bungoma/Tongaren/238 and at the demise of their mother they proceeded to institute Succession High Court Cause No. 379 of 2011 as the land's office required a grant of letters of administration.

17. He told the Court that on 22<sup>nd</sup> September 2011, while travelling from Bungoma in regard to a case related to land parcel No. Bungoma/Tongaren/238, he lost the original documents including allotment letter for plot 236-Tongaren and discharge letter all belonging to the late Flora Namwacha Baluma and that the same was reported to the police and an abstract was issued on 7<sup>th</sup> October 2011. He told the Court that a week after lodging the loss report, his original identity card and ATM cards were returned by one Richard Njoroge Nderitu who happens to be a guarantor of the Petitioner in Bungoma High Court Succession Cause No. 28 of 2010. He told the Court that the other land receipts were not recovered.

On cross-examination, he told the Court that his father's name was Baluma Shanina and that he only knew of the same in 1965. He insisted that land parcel No. Bungoma/Tongaren/238 was allocated to his mother and that he is not aware of a Court case in Kimilili in 1973.

18. OB-PW3 Abel Ateka testified that he is the Land Settlement Officer Tongaren Sub-County and is currently in-charge of Bungoma County. He told the Court that he has the file for land parcel No. Bungoma/Tongaren/238 Tongaren Settlement Scheme and confirmed that the same has an allottee. According to him, the allottee is one Shanina Buluma and that he produced in Court an allotment dated 22<sup>nd</sup> October 1965 which indicated that it was thumb printed by Buluma Shanina. He told the Court that the file contains the payment records with regard to land and development loans which were duly repaid in 28 years. He told the Court that he was posted in Tongaren in the year 2012 and that the contents with regard to this file were missing and he had to reconstruct the same. He told the Court that the charge was discharged on 23<sup>rd</sup> March 2006 and that the land was transferred to Buluma Shanina. He told the Court that the records indicate the name Buluma Shanina. He told the Court that they are yet to register the discharge making the land still under the Settlement Fund Trustee. He produced the file with regard to land parcel No. Bungoma/Tongaren/238 as an exhibit marked as OB.EXH 25.

On cross-examination by Counsel for the Objector, he told the Court that there is a discharge on the record and that the same is in the name of Baluma Shanina and it is dated 23<sup>rd</sup> March 2006. He confirmed to have seen the Objector's letter dated 20<sup>th</sup> April 2006, which was marked and produced as OB.EXH 5. He told the Court that the same is an irregularity for their office to write a letter to someone instructing them to come and pick a document. He insisted that he has not heard of any other alleged letter dated 20<sup>th</sup> April 2006 as the same does not exist. He told the Court that he could not ascertain the identities of the persons who paid up the loan and their concern is to see that the loan was paid. He confirmed that they have the death certificate of Baluma Shanina which indicates the date of death as 4<sup>th</sup> October 2007 and that the allottee swore an affidavit indicating that his name as Buluma Wasiuma alias Baluma Shanina and that his ID No. was 5729194 and that the name on this ID is Buluma Wasiuma.

He testified that it was not within his scope to know who was buried on the land and the identities of the persons fighting over the estate of the deceased. He insisted that their interest was only limited on



the account of the allottee and not the identity of the depositors. He told the Court that they do not issue legal receipts and that he was not disputing the contents in OB.EXH. 3. He reiterated that the file was lost prompting him to proceed to headquarters to have the same reconstructed and can't testify on how the Objector obtained the documents from their file.

On cross-examination by Counsel for the Petitioner, he testified that the allottee is indicated as Buluma Shanina and that the case regarding land parcel No. Bungoma/Tongaren/238 began in 1973. He confirmed to have written a letter dated 5<sup>th</sup> March 2014 in which he indicated the allottee as Baluma Shanina and that the allottee was a man not a woman. He told the Court that in 1973, the District Officer wrote a letter in which he claimed that a certain individual had falsely lodged a report of death of the allottee and that there existed three succession cases over the land in question. He confirmed that the allottee was attended to by one of their officers when he came with an affidavit regarding the issue of his name.

19. The Objector closed his case at that juncture paving way for the Petitioner's case.
20. PET-PW1 Isaac Muchuma Wasike, testified that he is the Petitioner herein and at his request this Court adopted the contents of his recorded statement dated 22<sup>nd</sup> March 2021 as his evidence in chief. He also relied on his documents vide list of documents (PET.EXH 1-6) dated 29<sup>th</sup> April 2021. According to him, the late Buluma Shanina alias Baluma Shanina was his father and who died on 4<sup>th</sup> October 2007. He told the Court that on 22<sup>nd</sup> October 1965, his late father was allotted land parcel No. Bungoma/Tongaren/238 by the Settlement Fund Trustee whereupon he appended his thumb print in the name of Buluma Shanina. He told the Court that due to the Europeans challenge in properly pronouncing Luhya names, they indicated his name as Baluma Shanina and that they were able to complete the loan on the said land. He availed in Court loan payment receipts marked as PET.EXH.3. Upon the demise of his father, he purposed to bury him on the said land but the Objector herein refused and due to his inability to instruct his Counsel, orders were issued in favour of the Objector against him ex-parte. He told the Court that due to unavoidable circumstances he was not able to appeal.
21. It was his testimony that in 1972, his late father informed him that the Objector herein instituted a succession cause over his late mother and brothers vide Succession Number 23 of 1972, with the intention of obtaining the land parcel No. Bungoma/Tongaren/238 claiming that his father was dead. On 13<sup>th</sup> July 1973, the District Officer, Tongaren Division, wrote a letter to the District Magistrate Kimilili informing him that the Objector and his accomplices had reported a false death of Buluma Shanina as he was still alive. He availed in Court the District Officer's letter marked as PET.EXH.4.
22. Subsequently, he testified that on 20<sup>th</sup> September 2007, the District Land Adjudication/Settlement office Bungoma District wrote a letter to the OCS Kiminini Police Station informing him that the District land Adjudication/Settlement office Bungoma District had allocated the land to Buluma Shanina, his late father in 1965. He availed in Court the District Land Adjudication/Settlement office Bungoma District Officer's letter marked as PET.EXH.5.
23. He told the Court that no record was availed by the Objector herein that they inherited land parcel No. Bungoma/Tongaren/238 from Buluma Shanina and that the Kimilili Succession Cause No. 23 of 1972 was abandoned by John Barasa. He further told the Court as per the affidavit sworn by Gabriel Kimaswa on 2<sup>nd</sup> March 2011 who claimed that the Objector herein is his son and that the said Gabriel died on 22<sup>nd</sup> November 1965. He told the Court that land parcel No. Bungoma/Tongaren/238 does not belong to Flora Namwacha but it belongs to Buluma Shanina. He confirmed presence of animosity between his father and the family of the deceased herein since 1972. He prayed that this Court declares him a bonafide beneficiary of Buluma Shanina alias Baluma Shanina.



On cross-examination, he told the Court that his father is Buluma Shanina and that Wasike is not his biological father but maternal uncle. According to him, his mother is Betty Shanina and that he grew up at the home of his mother. He told the Court that he does not have the identity card of his late father, Buluma Shanina, and that he does have his identity card but that the same does not indicate his late father's name. He told the Court that all his siblings are dead and which occurred prior to his birth. He told the Court that he was born in 1958 and that he did bury the remains of his late father on land parcel No. Bungoma/Tongaren/238. He disputed the allegations that his father had no children and that he lived on land parcel No. Bungoma/Tongaren/238 in 1965. He confirmed that the Objector and his brothers do reside on the said land and that he did help his father complete payment of the loan.

On re-examination, he told the Court that Joseph Wasiuma is a person he sent money to pay the loan on his behalf and that all payments were made in the name of Buluma Shanina. He reiterated that he got the name Wasike from his maternal uncles who were his guardians and that ID cards do not contain the names of the parents of an individual. He added that he does not know one Daniel Abungu. That he was not issued with letters by the Settlement officer.

24. At the close of the Petitioner's case, parties were directed to file their respective written submissions. Both parties duly complied.
25. I have considered the parties' evidence and submissions in respect of this matter. I shall be guided by the issues agreed upon by the parties as follows:

**i. Where is the allottee of the land parcel No. Bungoma/Tongaren/238?**

26. It was the evidence of OB-PW3, the Land Settlement Officer Tongaren Sub-County and who is currently in-charge of Bungoma County that their records indicated that the owner of the land parcel No. Bungoma/Tongaren/238 Tongaren Settlement Scheme is one Shanina Buluma. He produced in Court an allotment dated 22<sup>nd</sup> October 1965 which indicated that it was thumb printed by Buluma Shanina. He told the Court that the file contains the payment records with regard to land and development loans which were duly repaid in 28 years. He told the Court that he was posted in Tongaren in the year 2012 and that the contents with regard to this file were missing and that he had to reconstruct the same. It was his testimony that the charge was discharged on 23<sup>rd</sup> March 2006 and that the land was transferred to Buluma Shanina. He told the Court that the records indicate the name Buluma Shanina. He told the Court that they are yet to register the discharge making the land still under the Settlement Fund Trustee. He produced the file with regard to land parcel No. Bungoma/Tongaren/238 as an exhibit marked as OB.EXH 25.
27. There is no other evidence availed by the Objector herein disputing that of OB-PW3 apart from the averments that his late mother the deceased herein was the owner of land parcel No. Bungoma/Tongaren/238. The Objector has not annexed any evidence to support his claim and it is a cardinal principle in the administration of justice that Courts of law don't act in vain.
28. The Objector had the burden to prove to this Court that such evidence contrary to that of OB-PW3 existed that his late mother was the allottee of land parcel No. Bungoma/Tongaren/238. This burden on the Objector has not been discharged. The settlement officer confirmed that the allottee was a man and not a woman and this went contrary to the Objector's claim that the allottee was his mother.

Section 107 and 108 of the [Evidence Act](#) provides as follows:

107. Burden of proof





- “(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

29. In matters of this nature, it is not sufficient for the Objector to allege that his mother was the allottee in land parcel No. Bungoma/Tongaren/238, without material evidence being laid before this Court. The Petitioner did duly discharge his mandate under Section 107 and 108 of the *Evidence Act* that his late father Buluma Shanina alias Baluma Shanina is the allottee of land parcel No. Bungoma/Tongaren/238. Looking at the evidence of the Objector and Petitioner regarding the real allottee, it is clear that the Petitioner’s evidence meets the threshold of proof that Buluma Shamina was the allottee of the land and not Mrs Baluma Shanina alias Namacha Shanina.

**i. Whether the said allottee is dead and if yes, when did he/she die?**

30. As earlier reiterated, Section 107 of the *Evidence Act* Cap 80 of the Laws of Kenya places the burden of proof upon the party that alleges.
31. The Petitioner did not adduce evidence that his mother was married by the deceased under Luhya customary law and that the essentials of the customary marriage were fulfilled. Instead, what the Petitioner testified in Court is that his father is Buluma Shanina and that Wasike is not his biological father but maternal uncle. According to him, his mother is Betty Shanina and that he grew up at the home of his mother. He told the Court that he was born in 1958. He disputed the allegations that his father had no children and that he lived on land parcel No. Bungoma/Tongaren/238 in 1965. He told the Court that he does not have the identity card of his late father, Buluma Shanina, and that he does not have his identity card but that the same does not indicate his late father’s name. He told the Court that all his siblings are dead and that this occurred prior to his birth.
32. The evidence as availed by the Petitioner herein was not controverted by the Objector herein that the Petitioner herein is not the son of the late Buluma Shanina alias Baluma Shanina and that history has it that the parties once battled it out in the Chief Magistrate’s Court at Bungoma under Civil Suit No. 503 of 2007 where the Objector sought to have the remains of the late Buluma Shanina alias Baluma Shanina be exhumed from land parcel No. Bungoma/Tongaren/238.
33. Therefore, in spite of certain persons of interest not being called as witnesses, the evidence adduced by the Petitioner to the fact of him being the son of the late Buluma Shanina alias Baluma Shanina must be accepted as true.

**ii. Who are the dependants of the allottee**

34. Section 29 of the *Law of Succession Act* sets out the meaning of the term ‘dependant’ as follows:

For the purposes of this Part, “dependant” means—

- (a) .....;
- (b) such of the deceased’s parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-



brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and.....”

35. I have considered the evidence in the Court record and on a balance of probabilities, I find that the Objector has not brought any tangible evidence to show that he was the son of the late Buluma Shanina alias Baluma Shanina. On perusal of the Court proceedings in Bungoma CMCC No. 503 of 2007, it was the evidence of the Objector herein that his father was one Gabriel Balumo Chanina and that he died at a big tree in the years 1965. Also, it was the evidence of the Petitioner that the Objector’s father used to work with his father at big tree and upon his demise he decided out of a kind heart to host the deceased herein, Flora Namwacha, as his late colleague’s widow. This clearly means that the late Buluma Shanina alias Baluma Shanina was only survived by the Petitioner herein
36. In the case of Beatrice Ciamutua Rugamba v Fredrick Nkari Mutegi & 5 others [2016] eKLR, it was observed that “a dependent under Section 29 (b) and (c) must prove that he or she was being maintained by the deceased immediately prior to his demise. It is not the mere relationship that matters, but proof of dependency that counts.”
37. This simply means that the estate of the late Buluma Shanina alias Baluma Shanina was survived by only one beneficiary, the Petitioner herein and no dependants.
38. From the above analysis, it clearly means that the actions of the Objector herein and his family members with regard to land parcel No. Bungoma/Tongaren/238 amounts to intermeddling with the estate of the late Buluma Shanina alias Baluma Shanina. It is clear that the Objector and other proxies had embarked on a scheme to insert his mother as the allottee of the parcel of land and thereafter purported to be a beneficiary thereof despite the fact that the settlement office indicated that the allottee was a man. The Objector had difficulties in explaining how his mother became the allottee of the parcel of land. It is also possible that the Objector’s mother might have begun disinherit the genuine allottee of the land and that upon her demise, the Objector took it a notch higher. Section 45 of the Laws of Succession Act prohibits dealing in properties belonging to a deceased person before obtaining grant. It states:-

“(1) Except so far as expressly authorized by this Act, or by any other written law or by a grant of representation under this Act, no person shall, for any purpose take possession or dispose of, or otherwise intermeddle with any free property of a deceased person.”

39. In Gladys Nkirote M’itunga v Julius Majau M’itunga[2016] eKLR the Court stated that;
- “Whereas the law of succession does not define what intermeddling with the property of the deceased is, there is ample judicial decisions on acts which may amount to intermeddling. For instances, in the case of Benson Mutuma Muriungi v C.E.O. Kenya Police Sacco & Another [2016] eKLR the court observed that:
- “Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the Law of Succession Act. I should add that any act or acts which will dissipate or diminish or put at risk the free property of





the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the Law of Succession Act. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person.”

40. In view of the foregoing observations, i hold and find that the above are sufficient reasons to allow the Petitioners summons for confirmation of grant dated 4<sup>th</sup> October 2011 and filed in Court on 6<sup>th</sup> October 2011. The Objector’s summons for revocation of grant lacks merit and is dismissed. The following orders are hereby issued:

- a. The Grant issued to the Petitioner herein on 29<sup>th</sup> September 2010 is hereby confirmed and that the estate of the deceased Buluma Shanina alias Baluma Shanina in P & A No. 28 of 2010 shall be distributed as per the proposed mode of distribution by the Petitioner.
- b. The certificate of confirmation of grant dated 5/2/2013 issued vide P & A No. 379 of 2011 to the Objector herein with regard to the estate of Flora Namwacha Baluma alias Mrs. Baluma Shanina Buluma is hereby cancelled.
- c. Each party shall bear their own Costs

**DATED AND DELIVERED AT SIAYA THIS 29<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**D. KEMEI**

**JUDGE**

In the presence of:

M/s Oriko for Wanyonyi .....for Petitioner

N/A for Kassim ..... for Objector

Kizito/Ogendo.....Court Assistant

