

KENYA / JUDGMENT

# In re Estate of Vasta (Deceased)

## [2026] KEMC 812 (KLR)

[2026] KEMC 812 (KLR)

## COURT

Magistrate's Court

## BEFORE

EM Mwamuye

## CASE / FILE NUMBER

Succession Cause E084 of 2022

Source: new.kenyalaw.org · Research copy typeset by Esheria. Not court-issued or certified.

## REPUBLIC OF KENYA

## IN THE CHIEF MAGISTRATES COURT OF KENYA AT MOMBASA

## MAGISTRATES COURT FAMILY

## SUCCESSION CAUSE NO. E084 OF 2022

## IN THE MATTER OF THE ESTATE OF SHIVJI LAXMAN VASTA (DECEASED)

## RULING

1. Before the Court is the Applicant's Summons dated 24th June 2026 seeking, inter alia, review of the orders made on 15th November 2024 and rectification/amendment of the Certificate of Confirmation of Grant issued on the same date to include assets said to have been subsequently discovered.
2. The application is supported by the affidavit of Vinod Shivji Hirani, the Petitioner/Applicant and administrator of the estate.

### Background

1. The record shows that the deceased, Shivji Laxman Vasta, died intestate and that a Grant of Letters of Administration Intestate was subsequently issued to the Applicant on 27th February 2023.
2. The Grant was thereafter confirmed on 15th November 2024. The Certificate of Confirmation of Grant identifies Vasta Purbai Shivji Laxman and Vinod Shivji Hirani as the beneficiaries and provides for the asset then contained in the Schedule to be shared equally between them.

3. The Applicant's case is that after confirmation of the Grant, he discovered other assets belonging to the deceased which had inadvertently been omitted from the inventory and, consequently, from the Certificate of Confirmation of Grant.
4. He therefore seeks amendment of the confirmed Grant to bring those assets within the administration of the estate.

#### Additional Assets

1. From the supporting affidavit and the documents annexed thereto, the additional properties disclosed include:
2. C.R. No. 20546 – property situated in Mombasa Municipality measuring approximately 1.142 hectares, being Land Reference No. 6226 of Section I Mainland North;
3. C.R. No. 25626 – property situated in Mombasa District measuring approximately 0.3308 hectares, being Subdivision No. 9236 (Original No. 5869/4 Section I Mainland North);
4. Title No. Ngomeni/Squatter/Settlement/Scheme/1023, measuring approximately 4.99 hectares; and
5. C.R. No. 25625 – property situated in Mombasa District measuring approximately 0.344 hectares, being Subdivision No. 9235 (Original No. 5869/3 Section I Mainland North).
6. The Applicant has placed before the Court documentation relating to the said properties, including leases and title documents.

#### Rita Construction

1. The Applicant subsequently filed a Supplementary Affidavit in which he states that his late father, Shivji Laxman Hirani alias Shivji Lakhman Hirani, and himself were business partners in a business known as Rita Construction. He consequently seeks to have the business included in the Schedule of Assets of the estate.
2. In support thereof, the Applicant annexed a letter dated 1st July 2026 from Excel Business Consultants together with a Certificate of Registration of a Change of Particulars relating to Rita Construction. The certificate indicates that the business was originally registered on 10th November 1987 under registration number 129258 and identifies Shivji Lakhman Hirani and Vinod Shivji Hirani in connection with the business.

#### Issue for Determination

1. Having considered the application, the affidavits and the documents placed before the Court, the principal issue for determination is whether sufficient basis has been established for amendment of the Certificate of Confirmation of Grant to incorporate the subsequently discovered assets.

2. The Court must also determine the manner in which the Applicant's request regarding Rita Construction ought to be treated.

### Analysis and Determination

1. The purpose of succession proceedings is to facilitate the administration and eventual distribution of the entire estate of a deceased person.
2. It is therefore conceivable that even after confirmation of a grant, an administrator may discover property belonging to the deceased which was not known or included when the original inventory of assets was prepared.
3. The mere fact that such an asset was discovered after confirmation does not, without more, deprive the estate of its interest in that property. Where sufficient evidence is placed before the Court establishing that the property formed part of the deceased's estate, the Court may make appropriate orders to facilitate its administration.
4. In the present case, the Applicant has not merely asserted the existence of the additional immovable properties. He has annexed documentation in support of the deceased's interest in the respective properties. I am therefore satisfied, on the material placed before me, that sufficient basis has been established for the additional properties to be incorporated into the inventory of the estate.

### Whether the Earlier Distribution Should Automatically Apply

1. There is, however, an important distinction between bringing an omitted asset into the estate and determining how that asset is to be distributed.
2. The Certificate of Confirmation of Grant dated 15th November 2024 expressly provided for equal sharing between Vasta Purbai Shivji Laxman and Vinod Shivji Hirani in respect of the asset then contained in its Schedule.
3. The material presently before the Court does not, however, disclose a fresh consent or other sufficient material specifically setting out the proposed mode of distribution of the newly discovered assets.
4. I therefore do not consider it appropriate, merely by virtue of the previous order, to extend the existing mode of distribution automatically to assets which were not before the Court at the time of confirmation.
5. The prudent course is to permit the additional assets to be brought into the estate while leaving their distribution to be dealt with upon the administrator placing before the Court the appropriate proposed mode of distribution and, where necessary, the requisite consents.

### Rita Construction

1. I take a similar, but more cautious, approach regarding Rita Construction.

2. The Applicant's own evidence is that the deceased and the Applicant were business partners. The Certificate of Registration of Change of Particulars likewise identifies Shivji Lakhman Hirani and Vinod Shivji Hirani in relation to Rita Construction.
3. On that evidence, the whole of Rita Construction cannot properly be treated as an asset belonging exclusively to the deceased.
4. What is capable of forming part of the deceased's estate is the deceased's share or beneficial interest in the business as at the date of his death.
5. The evidence presently before the Court does not establish the precise extent or value of that interest. It would therefore be premature for the Court to pronounce itself on the deceased's percentage share or to distribute the business itself.
6. Accordingly, only the deceased's ascertainable interest in Rita Construction may be brought into the estate, and the extent of that interest should first be established before distribution.

## Disposition

1. For the foregoing reasons, the Court finds that the application is merited to the extent set out herein.
2. Accordingly, I make the following orders:
3. The Summons dated 24th June 2026 is hereby allowed to the extent set out below.
4. The Certificate of Confirmation of Grant issued on 15th November 2024 is hereby amended solely for purposes of incorporating the subsequently discovered assets of the deceased, without disturbing the distribution of the asset already contained in the said Certificate.
5. The following additional assets shall be incorporated into the inventory of the estate:
6. C.R. No. 20546, being Land Reference No. 6226 of Section I Mainland North, measuring approximately 1.142 hectares;
7. C.R. No. 25626, being Subdivision No. 9236 (Original No. 5869/4 Section I Mainland North), measuring approximately 0.3308 hectares;
8. Title No. Ngomeni/Squatter/Settlement/Scheme/1023, measuring approximately 4.99 hectares; and
9. C.R. No. 25625, being Subdivision No. 9235 (Original No. 5869/3 Section I Mainland North), measuring approximately 0.344 hectares.
10. In respect of Rita Construction, only the deceased's share, interest and/or beneficial entitlement in the said business as at the date of his death shall constitute part of the estate. The whole of Rita Construction shall not be treated as an asset belonging exclusively to the deceased.

11. The extent of the deceased's interest in Rita Construction shall be ascertained and appropriate supporting documentation placed before the Court prior to its distribution.
12. No order is made at this stage regarding the distribution of the additional assets set out in Orders 3 and 4 above. The administrator shall place before the Court the proposed mode of distribution together with the requisite consents or other appropriate material for consideration and approval by the Court.
13. For avoidance of doubt, the distribution already approved under the Certificate of Confirmation of Grant dated 15th November 2024 remains undisturbed.
14. An Amended Certificate of Confirmation of Grant shall issue reflecting the inclusion of the additional assets, with their distribution reserved pending further orders of the Court.
15. This being a succession matter, there shall be no order as to costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT MOMBASA THIS 27TH AUGUST 2026.**

.....

**EMILY M. MWAMUYE**

**SENIOR RESIDENT MAGISTRATE**

---

### Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

**ORIGINAL SOURCE**      <https://new.kenyalaw.org/akn/ke/judgment/kemc/2026/812/eng@2026-08-27>

**CASE PAGE**              <https://chat.esheria.ai/case-law/kenya/Reviewoforders-magistrates-court-2026--cff8aebdeedbdf02829dcfc>

Prepared on 27 October 2026 · Esheria