



In re Estate of Tubula Lisaka Ahindhuka (Deceased) (Succession Cause 804 of 2009) [2024] KEHC 10522 (KLR) (26 August 2024) (Judgment)

Neutral citation: [2024] KEHC 10522 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 804 OF 2009
SC CHIRCHIR, J
AUGUST 26, 2024**

IN THE MATTER OF THE ESTATE OF TUBULA LISAKA AHINDHUKA

IN THE MATTER OF

ANGELINE NYANGA APPLICANT

JUDGMENT

1. The proceedings herein relate to the Estate of Tibula Lisaka Ahindukha (Deceased). On 22/11/2010, a Grant of settlers of Administration intestate were issued to one Indretta Lunani Lisaka in respect of THE deceased's Estate. That Grant was confirmed on 12/06/2012 and a certificate of confirmation of Grant issued on 14/06/2012.
2. On 13/08/2019, Angeline Nyanga, the Applicant herein, filed for the revocation of Grant, and by an order, made on 14/09/19 the court revoked the Grant. Subsequently through a mediated settlement the Applicant and one Alex Tubula were appointed as Administrators of the Estate on 06/08/2021.
3. Through the summons dated 12/01/2022, the Applicant applied for confirmation of Grant. This is the summons due for determination.
4. In the affidavit in support she has listed land parcel no. Idako/Shiseso/233 measuring about 6.4 hectares as the only property of the Estate (The suit property) and she listed herself, Joseph Ikhelahi and Parcel Ngala as the dependants of the deceased.
5. In a ruling delivered on 29/07/2022, Justice Musyoka declined to confirm the Grant and directed the Administrators to make full disclosure of the dependants of the Deceased.
6. In compliance with the said directions, the Applicant swore an Affidavit and a further Affidavit sworn on 26/10/2023 in which she listed the Deceased's dependants as follows:

1st wife – Rose Isoyi Children:

1. Augustine Mzeo Tubula



2. Jerementina Muhanda
3. Anne Muremevo
4. Alphonse Shisira

2nd wife – Henrietta Lunani Children:

1. Rita Khasoa Tubula (Deceased)
2. Elizabeth Tubula (Deceased)
3. Joseph Ikhilachi (Deceased)
4. Rose Tubula
5. Dariya Muyuko (Deceased)
6. Njomo Tubula (Deceased)
7. Linet Tubula
8. Petronila Mutsaca
9. Emma Khahoya
10. Pascal Ngala

3rd wife: Anna Muremelo Children:

1. Angeline Nyanga (Applicant)

7. She further stated that the 1st wife has another parcel of land to which she and her children relocated to, during the life time of the deceased. She is however in occupation of the suit property together with the children of the 2nd wife. The 3rd wife, her mother separated with the deceased .
8. On perusal of the affidavits filed , I directed the applicant to take the witness stand for purposes of clarifying averments she had made on the said Affidavits

The oral Evidence

9. She told the court that the first wife Rose Isoyi and Henrieta Lunani have since died; her own mother has also died .That Augustine Mzeo Tubula died without leaving any children or wife; That Jereminta has her own land in Khayega; Alphonse Shirisha from the 1st wife do not live in the suit property as they have their own land.
10. She further testified that Rita Khasoa has since died, she never left any children ; That Elizabeth Tubula has also died but left behind children who currently reside in kakamega ; Joseph ikalachi died but left no children or wife. She further told the court that Darinya Muyuke died and left no children; Njomo Tubula also died without leaving any children while Linet Tubula has her own residence in Shinyalu. She further stated that Patronila Mutsaca lives on her marital home while the whereabouts of Emma Khaoya remain unknown. She further told the court that Pascal Ngala's whereabouts is also unknown but his children , one of whom is her Co – Administrator Alex Tubula, reside in the suit property.
11. Despite notices being issued, the rest of the dependants failed to appear in court. The co- Administrator was further issued with summons to appear but failed to do so . consequently, the hearing proceeded without their participation.



Determination

12. I have considered the application, the supporting and further affidavits as well as the Applicant's oral testimony in court.
13. From the evidence, the wives of the deceased have all died. The appropriate mode of distribution therefore is the one set out under section 38 of the Law of succession Act. The section provides as follows: "Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.
14. It further came out from the testimony of the applicant that Augustine Mzeo Tubula, Rita Kasoa, Darinya Muyuku and Njomo Tubula died without leaving behind children or spouses. It was further her testimony that the children from the 1st wife have their own land in which they had settled prior to the deceased's demise. I take the applicant's Testimony as uncontested as the rest of the beneficiaries failed to turn up to contest the facts presented.
15. Thus in regard to the children of the first wife, I accept the applicant's testimony that they have since settled on another land parcel to which they moved to, prior to the deceased's death. Consequently, I will exclude the children from the 1st wife from the distribution of the suit property.
16. It was further the applicant's testimony that the children of the 2nd wife as well as herself from the 3rd wife, reside in the suite property.
17. I have noted that even though the applicant has listed the children of the deceased, she has not made provisions for all them. From her oral testimony in court, it is apparent that, she has assumed that her married half – sisters should not inherit from the deceased. However, section 38 of the Law of succession Act envisages equal distribution regardless of the marriage or economic status of the deceased's heirs. In this regard I find support in the case *Eliseus Mbura M'thara v Harriet Ciambaka & Another* [2012] eKLR where the court held: The law of Succession Act does not discriminate between gender in matters of succession or inheritance. Under the law of Succession Act and indeed under the Constitution a child is a child and every person has equal rights under the law irrespective of gender. The Law of succession Act does not discriminate between married or unmarried daughters but gives them equal rights to inheritance as the other children (sons) of a deceased person.
18. The applicant has also proposed to hold some of the properties in trust but there is no reason advanced as to why trusteeship is necessary. By the Applicant's own admission, the said children are Adults. Therefore the plea by the Applicant to hold the property in trust has no basis.
19. In view of what I have stated in paragraph 14 hereof, I have identified the following heirs to be either surviving, or died but left children behind and are therefore entitled to a share of Land parcel No. I dako/Shiseso/233 :
 1. The Estate of Elizabeth Tubula
 2. The Estate of Joseph Ikalachi
 3. Rose Tubula
 4. Linet Tubula
 5. Petronila Mutsaca
 6. Emma Khaoya



7. Pascal Ngala
8. Angeline Nyanga
20. A search done of the suit property on 7/8/08 shows that the property is approximately 6.4 ha (equivalent to 14.4 acres). This property will be shared equally between the deceased's children in accordance with section 38 of the [Law of Succession Act](#).
21. In conclusion, I hereby proceed to make the following orders:
 - a). The suit property will be shared equally between the following dependants:
 1. The Estate of Elizabeth Tubula
 2. The Estate of Joseph Ikhalachi
 3. Rose Tubula
 4. Linet Tubula
 5. Petronila Mutsaca
 6. Emma Khaoya
 7. Pascal Ngala
 8. Angelina Nyanga
 9. Road access 0.1 acres
 - b). The Grant of letters of administration is hereby confirmed on the above terms.
 - c). The applicant to carry out and complete the transmission process within the next 120 days.
 - d). Right of appeal;- 28 days

DATED, SIGNED AND DELIVERED AT NAIROBI, VIA MICROSOFT TEAMS, THIS 26TH DAY OF AUGUST 2024.

S. CHIRCHIR

JUDGE

In the presence of :

Godwin- Court Assistant

Angeline Nyanga- The Applicant.

