



In re Estate of Justus Munyole Nakitare (Deceased) (Probate & Administration 86 of 2000) [2024] KEHC 10399 (KLR) (23 August 2024) (Ruling)

Neutral citation: [2024] KEHC 10399 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
PROBATE & ADMINISTRATION 86 OF 2000**

DK KEMEL, J

AUGUST 23, 2024

IN THE MATTER OF THE ESTATE OF JUSTUS MUNYOLE NAKITARE (DECEASED)

BETWEEN

WILLIAM WANJALA MUNYOLE PETITIONER

AND

JARED W. WANJALA 1ST OBJECTOR

MARTIN M. MUNYOLE 2ND OBJECTOR

JASPER WANJALA 3RD OBJECTOR

RULING

1. Vide an affidavit of Protest sworn on 30th June 2023, the Objectors herein aver that the Objection before the Court was with regard to the Petitioner herein, their father. According to the Objectors, by a High Court ruling, the Petitioner was awarded 5 acres from the estate of the deceased herein, on 7th November 2010, they ended up before the clan to deliberate on their share of the ancestral land (i.e 5 acres) and at the same meeting their differences were resolved and the Petitioner proceeded to distribute the 5 acres to each son and himself. They aver that since issuance of a rectified Certificate of Confirmation on 13th March 2023, the Petitioner deliberately changed his mind and unlawfully breached the peace and interfered with the boundary features. They aver that they oppose the Petitioner occupying the position of the Administrator of the estate of the deceased herein.
2. The Objectors swore a further affidavit on 25th September 2023, averring that the Petitioner was in contravention of the Court orders issued on 12th September 2023, as he was yet to reply to their affidavit in Protest and reiterated that they opposed the Certificate of Confirmation that was issued to the Petitioner herein. They requested this Court to issue the orders of revocation as sought.



3. Opposing the affidavit in Protest, the Petitioner swore a replying affidavit on 30th October 2023, wherein he concurred with the Objectors that he was allocated 5 acres from the estate of the deceased herein, their grandfather, by the Court and that they have no right to speak of the estate of the deceased as they are not direct beneficiaries and can only have a claim to his estate after he duly distributes the same and transfer ownership to them
4. Vide Court directions dated 2nd November 2023, this Court ordered the parties to canvass the affidavit of Protest by way of written submissions. All the parties complied.
5. The sole issue for determination is whether the Objectors affidavit of Protest dated 30th June 2023 is merited.
6. The succession proceedings as they were before this Court involved the estate of the deceased herein who is the father of the Petitioner herein and the grandfather of the Objectors. It is imperative to note that a grandchild is a direct heir to the estate of the grandparent where the parent predeceased the grandparent. The grandchildren get into the shoes of their deceased parents and take the parent's share in the estate of the grandparents. This was stated in *Re Estate of Wabome Njoki Wakagoto* (2013) eKLR where it was held: -

“Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”

7. From the above, it is clear that the Objectors herein lack the locus standi to appear before this Court with regard to the estate of the deceased herein as long as the Petitioner is alive, well and kicking. Indeed, the petitioner is the father of the Objectors and thus they can only claim under him and not directly from their grandfather. The term 'Locus Standi' connotes the right of a party to bring an action. It seeks to determine whether a party has properly brought an action or is properly before the Court. There are many decisions on the subject from the Court and to quote the decision in the case of *Michael Osundwa Sakwa -v- Chief Justice and President Supreme Court of Kenya & Another*. [2016] eKLR which referred to the matter of *Ms Priscilla Nyokabi Kanyua -v- Attorney General & I.E.B.C.*, Nairobi H.C CP NO. 1/2010 stated that: -

“In Kenya, the court has emphatically stated that what gives Locus Standi is a minimal personal interest and such interest gives a person standing even though it is quite clear that it would not be more affected than any other member of the population.”

8. Further, it is imperative to note that the only role of this Court, as a Probate Court, is distribution of the property of a dead person. The law which governs this area of distribution of assets of a dead person is the *Law of Succession Act*, cap 160, Laws of Kenya. This is not the place for parties who want their father's inheritance while he is still in the land of the living, to advocate their rights and make their demands. The issues as fronted by the Objectors are squarely within the province of the Environment & Land Court and not this Court. Article 162(b) of the *Constitution* gives to the Environment and Land Court the sole mandate and jurisdiction to determine issues of ownership, use and occupation of land.



9. The moment my learned colleague, Ali- Aroni-J (as she was then) dispensed herself in the judgement dated 20th January 2017, the manner of distribution of the estate of the deceased herein and which was upheld in the Court of Appeal, this Court became functus officio. The doctrine of *functus officio* was considered by the Court of Appeal in [Telkom Kenya limited v John Ochanda \(suing on his own behalf and on behalf of 996 former employees of Telkom Kenya limited\)](#) (2014) eKLR, where the Court held that -

“*Functus officio* is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon.”

10. There is no evidence that the Objectors if aggrieved by the decision of the Court of Appeal have lodged an appeal or preferred a review before it. The objectors are best advised to approach the Environment and Land Court regarding disputes over boundaries, use and occupation of land. As the objectors have been found to lack the requisite locus standi to mount the application dated 30.6.2023, the said application therefore is a no-starter and an abuse of the court process.

11. In view of the foregoing observations, it is my finding that the Objectors’ application styled as a protest dated 30th June 2023, lacks merit. The same is dismissed with no order as to costs.

It is so ordered.

DATED AND DELIVERED AT BUNGOMA THIS 23RD DAY OF AUGUST 2024.

D. KEMEI

JUDGE

In the presence of:

Olonyi for Muyala for Petitioner/Respondent

Martin Munyole Objectors/Applicants

Jasper Wanjala

Kizito Court Assistant

