



REPUBLIC OF KENYA



**Nyaguthi v Nderi (Civil Appeal 31 of 2021)  
[2024] KEHC 16414 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16414 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL 31 OF 2021  
RM MWONGO, J  
DECEMBER 19, 2024**

**BETWEEN**

**DORIS NYAGUTHI ..... APPELLANT**

**AND**

**TIRITHIA WAIRIMU NDERI ..... RESPONDENT**

*(Being an appeal from the ruling of Hon. G.W. Kirugumi PM  
delivered on 19th August 2021 in CMCCSUCC.56 of 2016)*

**JUDGMENT**

1. The Appellant herein filed her memorandum of appeal dated 7<sup>th</sup> September 2021 where she has raised seven grounds of appeal against the ruling delivered on the 18<sup>th</sup> August, 2021.
2. In the trial court the appellant had filed summons for revocation of a grant issued on 12 May 2017. The summons dated 21 September 2020 was dismissed as the trial court held that the appellant had not produced sufficient evidence to prove that she was the daughter of one Videsio Koigi (deceased) a son of the deceased herein.
3. Parties filed written submissions as directed by the court.

**Appellant's Submissions**

4. The appellant states she is a grandchild of the respondent herein. She asserts that she is a child of Videsio Koigi who is a child of the respondent and the deceased herein. This information was backed up at the trial by her uncle Theophilus Maina Nderi who is the brother to her father Videsio Koigi and a son of the deceased herein.



5. Theophilus Maina Nderi came in as the appellant's witness. He testified that the appellant is a daughter of his brother who is now deceased. He even said that when the appellant was being born, he took the appellant's mother who was accompanied by his wife to the hospital for delivery of the appellant.
6. The Chief's letter dated 27/1/2020, shows clearly that the appellant is a child of Videsio Koigi who was a son to the deceased in this case. He testified that when the father died the appellant was chased out of the respondent's home together with her mother who thereafter passed away. She is now an orphan.
7. The trial court in delivering its judgment said that the chief wrote contradictory letters. One was dated 3/3/2016 and another letter dated 27/1/2020. It therefore found the Chief's testimony unreliable.
8. However, the appellant submits that the Chief's testimony given on oath should not be ignored since he knows his village people very well. When asked why he did not raise the issue early enough the chief said he had asked the family about the appellant when he was writing the first letter dated 3/3/2016 but the family told him they will know what to do to the appellant if at all she demands a portion. Furthermore, they had already chased her away from their home.
9. The court also said that the appellant did not produce letters of administration to the estate of Videsio Koigi. It is noted that the appellant's father died before her grandfather or the deceased herein.
10. It was submitted that the family of the deceased the respondent herein, being the wife of the deceased and also the administrator of the estate, should have included the appellant in the distribution. She was entitled to take the portion of her father who would have been entitled to a share if he had been alive to date.
11. It was submitted that the appellant needs no letters of administration to the estate of her deceased father, because her father did not have a share and neither could he get a share because he died earlier and/or before the deceased.
12. The applicant did not have a birth certificate since it was misplaced when she was young. She never thought of getting another birth certificate thereafter considering that both her parents are dead, she is an orphan, and is poor and with no source of income.
13. The appellant relied of the case of In the matter of the estate of Veronica Njoki Wakagito (deceased) (2013) eKLR the court stated:

“The only time grandchildren can inherit directly from their grandparents is when the grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents”
14. Further reliance is placed of Rule 73 of the Probate and Administration Rules which gives the court inherent powers to make necessary orders for the ends of justice, and Section 68(1) *Land Registration Act* which empowers the court to grant inhibitions in land matters.

### **Respondent's Submissions**

15. The Respondent's submission is that the core issue for determination before this court is whether the trial court erred in finding that the appellant was not entitled to a share of the estate of the deceased herein.
16. It was submitted that the applicant testified that she was the daughter of Videsio Koigi (deceased), a son of Bernard Tito Kigo the deceased herein, but she did not produce any birth certificate or any other documents that proved that the deceased had recognized her as his daughter.



17. One of the witnesses, Theophilus Maina Nderi also testified that he did not see any birth certificate supporting the allegations. In addition, the chief who had written the letter dated 27<sup>th</sup> January, 2020 confirmed that no birth certificate was given to him confirming that the appellant was indeed the daughter of Videsio Koigi (deceased).
18. It was therefore, submitted that the appellant did not produce sufficient evidence to prove that she was the daughter of Videsio Koigi(deceased)and thus she was not entitled to the estate of Bernard Nderi Tito(deceased).
19. The respondent relies on the case of Re estate of Kithogu Charii (deceased)2020 eKLR. There, the court held that a person claiming in the estate of the deceased must be identified through birth certificates or national identity cards. As such, the trial court did not err in holding that the appellant had not proved that she is entitled to the estate of the deceased since she had not produced any concrete evidence to prove that she was so entitled.

### **Issues for Determination**

20. The only issue for determination is whether the trial court erred in finding that the appellant was not entitled to a share of the estate of the deceased herein.

### **Analysis and Disposition**

21. The issues for determination before this court is whether the court erred in finding that the appellant did not prove what she was a granddaughter of the deceased and was therefore not entitled to share of the estate of the deceased herein.
22. The estate of the deceased, Bernard Nderi Tito Kigo, comprised of land parcels Inoi/Kiangai/506 and Inoi/Kiangai/706.
23. The appellant had filed for summons for revocation of grant dated 21<sup>st</sup> September, 2020 where she sought for orders to revoke the grant issued on 12<sup>th</sup> May, 2017 on grounds that the same was obtained by concealment of the fact that she was the daughter of Videsio Koigi (deceased) who was the son of the deceased herein Bernard Nderi Tito. As already noted, the court held that the appellant had not produced sufficient evidence to prove that she was indeed the daughter of Videsio Koigi deceased. The application was therefore dismissed.
24. According to the evidence of the appellant in cross-examination she stated (at page 6 proceedings) as follows:

“The Chief told me when he wrote the first letter, he was not told about me. He knew my father. He was not told about me but when I told him he remembered.” (Emphasis added)

25. On his part the Chief’s evidence was that:

“Later Doris(appellant) came to my office. She complained. She said she wants her share. I called them. Some agreed some refused. Doris did not give me any documents.

I wrote for them a letter to file a succession..... I told them to include Doris.....Doris’s mother got married in Kamba. Doris was left with her grandmother. I did not see any documents to show he was a father.” (Emphasis added)



26. From the evidence several things can be concluded: a) the Chief altered his original letter on the strength of the applicant's information. b) the Chief's knowledge was not real and personal but depended on what he was told.

27. It is clear that the Chief's shifting position was based on the information being fed to him.

In the Ruling the learned trial magistrate stated

“The Chief wrote two contradictory letters for no apparent reason without documentary evidence.”

His testimony was that he was issuing the letters based on what he was informed not out of his personal knowledge. this witness was extremely unreliable.” (Emphasis added)

28. Having perused the proceedings, I agree with the trial court's assessment of the Chief's evidence. He shifted his position according to who was presenting information to him. There is nothing to show that he had personal knowledge of Videsio who had pre-deceased the deceased herein. Further, he had no documents upon which he could satisfy himself as to the true position.

29. The evidence of Theophilus Maina was relied of by the appellant. He testified that he was deceased's son. He stated, inter alia:

“Doris (appellant) was born at our place. Her parents separated. My wife escorted her mother to the maternity hospital. My wife is Nancy Wanjira..... I educated her father who was my younger brother. He got unwell and I buried him. She (Doris) was a student when her father died.”

30. In cross-examination he said:

“I was a beneficiary in the succession. I don't recall if I was in court.....

.....I sold and bought another parcel. I was not silent because she was not her daughter. It was because I saw she is oppressed.”

31. The trial magistrate assessed his evidence thus:

“Theophilus Maina and his brother Titus Kigo were aware and participated fully when Letters of administration were issued ad confirmed. They participated in the succession case and later sold their parcels.

It is notable they did not inform the court that their deceased brother had a daughter.....

Theophilus Maina's is also unreliable and motivated by greed and deceit rather than purported empathy for the applicant.

In light of the testimony by the petitioner that the applicant was not named after her and was unknown to her, the applicant failed to provide sufficient evidence to prove her claim.”

32. The learned magistrate did not, in my view in finding that there was inefficient evidence that the appellant was the deceased's granddaughter; or daughter of the deceased's son. Such evidence was not readily availed.



33. Theophilus Maisa said his wife Nancy Wanjira escorted the applicant's mother to maternity hospital. She was not called to testify.
34. Ultimately, the daughterhood and heritage of the appellant was not proved. It was for her to avail evidence on a balance of probabilities to prove that she was the deceased's grandchild.
35. In re Estate of Miruka Marora (Deceased) (Succession Appeal 58 of 2023) [2023] KEHC 26965 (KLR) (19 December 2023) (Judgment) Chigiti J held:

“The letter by the chief is only intended to introduce the parties involved and the beneficiaries. The chief is not a party to the proceedings.”

On the other hand, In re Estate of Dinah Limo (Deceased) [2021] eKLR Ngetich J held:

“A chief's letter is crucial as it assists the court to identify the beneficiaries of the deceased.”

36. However, where a Chief's letter avails contradictory information, it cannot be credibly relied upon for the content it espouses. It is for the applicant relying on it to go beyond the Chief's letter to prove the position they wish to be relied upon by the Court.
37. The respondent submitted that one of the witnesses, Theophilus Maina Nderi also testified that he did not see any birth certificate supporting the allegations. Further, the chief who had written the letter dated 27<sup>th</sup> January, 2020 confirmed that no birth certificate was given to him confirming that the appellant was indeed the daughter of Videsio Koigi (deceased).

### **Conclusion and Disposition**

37. Ultimately, and in light of the foregoing there is nothing in the evidence availed to show that the learned trial magistrate's finding or holdings were erroneous.
38. Accordingly, this Court is not persuaded to overturn the trial court's ruling which is hereby upheld. In the result the appeal is hereby dismissed with no orders as to costs.
39. Orders accordingly.

**DATED AT KERUGOYA THIS 19<sup>TH</sup> DAY OF DECEMBER 2024**

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**R. MWONGO**

**JUDGE**

Delivered in the presence of:

Otieno - holding brief for Makworo for Respondent

Makazi - for Appellant

Court Assistant, Murage

