



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Peter Rapando Shikanda (Deceased) (Succession Appeal  
E015 of 2021) [2023] KEHC 1489 (KLR) (28 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1489 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION APPEAL E015 OF 2021**

**PJO OTIENO, J**

**FEBRUARY 28, 2023**

**IN THE MATTER OF THE ESTATE OF JOSEPHINE MAKANDA AKHONYA  
(DECEASED)**

**BETWEEN**

**PAUL COLLINS AKHONYA ..... APPELLANT**

**AND**

**ESTOPEL SALOME OBIERO ..... 1<sup>ST</sup> RESPONDENT**

**BETHSHEBA SUMBA AKHONYA ..... 2<sup>ND</sup> RESPONDENT**

**HANNINGTON MAPESA MURONO ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The proceeding at the trial court yielding to this appeal were initiated by the appellant who sought to be issued with a grant to administer the estate of the deceased. The grant was issued and later confirmed.
2. Later the respondents (objectors then) filed an application for revocation pursuant to section 76 of the Act and asserted that the proceedings leading to the grant being issued in favour of the administrator were conducted stethily and without consulting with them by the petitioner who is a grandchild yet the objectors are children to the deceased.
3. The petitioner opposed the application on the grounds that the land initially belonged to her grandfather and husband to the deceased herein and that the deceased only acquired the land out of succession cause.



4. Having appraised the evidence presented to the court, the trial court by a ruling dated October 25, 2021 found merit in the application for revocation, and allowed the same while saying:

“After going through the above provisions of the Law of Succession Act and the issues raised in the application before court, I find that the Petitioner did not include all the dependants of the deceased and proceed to annul the grant issued to the Petitioner dated January 4, 2011 and the certificate of confirmation made on September 21, 2021 is hereby set aside. The court further orders that land reference number S/Wanga/Buchifi/147 reverts back to the name of the deceased.”

5. The only consideration for the court in determining the appeal is whether the appellant was obliged to notify the respondents as children to the deceased.
6. The answer to that question begs the obvious question whether the appellant stood in priority to or equality with the respondents in bringing the petition. The answer to that second question is readily available in section 28, 51 and 66 of the Law of Succession Act giving the order of preference on who may apply for grant.

Section 66 of the Act provides;

“Preference to be given to certain persons to administer where deceased died intestate When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference— (a) surviving spouse or spouses, with or without association of other beneficiaries; (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;”

7. It is to this court basic that a grandson stands in no priority to the children of the deceased.
8. The only way the petitioner would have actually pursued the grant was by consent by the respondents as persons standing priority over him consenting to his administration. However even in that event, he would still be obliged to disclose all the names of the children of the deceased. Here the petition and the grant resulting therefrom were never in consonance with the law under sections 51 and 66 of the Act. It was glaring that the proceedings were defective in substance in that no full disclosure of the children was made. The flip side is that there was a false statement made that only three grandchildren and one beneficiary were left behind. That was untrue statement to justify the making of grant. To this court, at least three grounds under Section 67 of the Act were demonstrated to have been established to merit revocation of the grant.
9. It is therefore the finding of the court that the trial applied the law to the fact and arrived at a correct decision which cannot be faulted.
10. That the land could have belonged to the grandfather to the petitioner and was acquired by the deceased pursuant to a succession process is not available for determination in this cause. It is also not a case for determination in the cause whether the deceased held the land in trust. That is for another forum to determine.
11. It may be worth repeating that the mandate of a succession cause is to identify the net estate of the deceased, the beneficiaries entitled thereto, any liabilities against the estate, determine how to answer to those liabilities then to distribute the estate to the beneficiaries. In this matter, the petitioner and he



first three people named as beneficiaries are not children of the deceased and to accede to the appeal is to subvert the letter and spirit of the *Law of succession Act.*

12. I find no merit in the appeal and considering that the appellant had acted improperly, I do dismiss the appeal with costs to the respondents. Let those costs be pursued and recovered within 120 days from today. Mention on July 13, 2023 for purposes of closing the file.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**PATRICK J. O. OTIENO**

**JUDGE**

**In the presence of:**

Ms Change for the appellant

No appearance for respondent

Court Assistant: Polycarp

