



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Paul Muhanda Agonya ( Deceased) (Succession Cause  
150 of 2010) [2023] KEHC 3505 (KLR) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3505 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 150 OF 2010**

**WM MUSYOKA, J**

**APRIL 28, 2023**

**JUDGMENT**

1. The deceased herein died on September 1, 2008. There are several letters from the Chiefs on the deceased. The Assistant Chief of Ivakale Sub-Location wrote, to the Chief of Kambiri Location, a letter, dated December 12, 2008, which has been placed on record, indicating that the deceased had been survived by 1 widow, 1 daughter, 1 son and a purchaser, being Joice Musiyile Manasi, Diphina Khatonde Muhanda, John Milimu and Elias Mategwa Moard, respectively. There was an earlier letter by the same Assistant Chief, dated December 9, 2008, identifying the persons with a beneficial interest in the estate as 1 widow, 5 daughters, 1 son and 1 purchaser. The names given were of Joice Musiyile Manasi, Diphina Khatonde Muhanda, Gertrude Achitsa, Margaret Muhanda, Leah Muhanda, Jane Muhanda, John Milimu and Elias Mategwa Moard.
2. The file of papers before me is in a rather disorderly state. I suspect that all the filings in the matter are not on record. It appears as if representation to the estate was sought by a petition that was filed herein on March 9, 2010, at the instance of John Muremi Muhanda, in his capacity as son of the deceased. The deceased is said to have been survived by 1 individual, the son, John Muremi Muhanda, and to have died possessed of Isukha/Kambiri/1631. Letters of administration intestate were made, on June 13, 2012, to John Muremi Muhanda, and a grant was duly issued, dated July 5, 2012. I shall refer to John Muremi Muhanda, hereafter, as the administrator.
3. The summons for determination is for revocation of grant. It is dated October 14, 2016. It is at the instance of Diphina Khatonde Muhanda and Gertrude Achitsa Muhanda. I shall refer to the 2 of them as the applicants. They are daughters of the deceased. They disclose that the deceased died a polygamist, having married 3 times. He has survivors from all 3 houses. The first house has 2, the second house has 4 and the third 1. They complain that they were not disclosed in the petition, nor in the summons for confirmation of grant. They also complain that the administrator did not disclose all the assets of the estate, and did not list a buyer of land from the deceased as a liability or creditor of the estate.
4. The administrator responded to the application for revocation, vide his affidavit of March 17, 2021. He asserts that the deceased had only 1 wife, Susan Wamboi, who he had married under statute. He concedes that he had omitted some assets from the schedule in the petition. He denies that there was a



- legitimate buyer of the estate lands, and points at some ruling, made on September 15, 2016. He claims that he obtained the consents of all the beneficiaries, including the applicants.
5. The application was disposed of by way of viva voce evidence, following directions given on December 2, 2020. The oral hearing happened on March 18, 2021. Diphina Khatonde Muhanda, was the first to take the stand. She reiterated the contents of their supporting affidavit. She stated that her mother left the deceased, and married Augusto Omaso. She identified the survivors as the applicants, the administrator and Susan Wamboi. She said Margaret Wairimu was a sister of the administrator, Leah and Jane. She denied a letter shown to her, dated December 15, 2008, which claimed that the applicants had renounced their interest in the estate. She said that Elias Mategwa had bought land from the deceased, from what the deceased himself had told her.
  6. Dofiko Imbiakha Andarea followed. He was a son-in-law of the deceased, being the husband of Gertrude Achitsa, a daughter of the deceased. She said that the mother of the applicants was not buried on the estate. He said that she was estranged from the deceased. He described Susan Wambui as the second wife of the deceased, married under statute.
  7. Josephat Mutambo Lusiri was next. He was a retired assistant chief. He said that he was a neighbour of the deceased. He knew the family of the deceased. The deceased had 3 wives. He said that 1 of the wives died, while the deceased was living with Joyce, before his demise. He referred to the other wife as Pita Agnetta. He said that Susan Wambui was the mother of the administrator, and that she had also died. He said that the only wife alive was Joyce.
  8. The administrator did not testify. He closed his case on February 23, 2022, indicating that he was relying on his affidavit, sworn on March 17, 2021.
  9. The application that I am determining is for revocation of the grant herein. Discretion to revoke a grant is given under section 76 of the Law of Succession Act, cap 160, Laws of Kenya. Revocation can be on application or by the court on its own motion. The application herein is principally anchored on non-disclosure or concealment of matter from the court. The applicants claim to be daughters of the deceased. The administrator has not denied that. Yet when he sought representation, he only disclosed himself as the sole survivor of the deceased. That amounted to non-disclosure or concealment of matter from court. The grant was obtained on a lie to the court, that the administrator was the only child of the deceased, yet the deceased had other children. That is enough for me to revoke the grant herein.
  10. Consequently, the order that I make herein, is that the grant made herein, on June 13, 2012, to the administrator, is hereby revoked. I appoint Diphina Khatonde Muhanda and John Muremi Muhanda as administrators of the estate. A grant shall issue to them accordingly. They have 45 days to apply for confirmation of their grant, in an application which shall involve all the beneficiaries. Issues as to who the legitimate wives of the deceased were, should be addressed at the confirmation hearing. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 28<sup>TH</sup> DAY OF APRIL 2023**

**WM MUSYOKA**

**JUDGE**

**Mr. Erick Zalo, Court Assistant.**

**Appearances**

**Mr. Tanui, instructed by Samba & Company, Advocates for the administrator.**



**Mr. Munyendo, instructed by Oscar Wachilonga & Company, Advocates for the applicants.**

