



**Nasimiyu & 2 others v Masoni & another (Succession Cause  
51 of 2005) [2023] KEHC 3819 (KLR) (25 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3819 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
SUCCESSION CAUSE 51 OF 2005  
REA OUGO, J  
APRIL 25, 2023  
IN THE MATTER OF THE ESTATE OF THE LATE BEN MASONI  
AND  
IN THE MATTER OF SUMMONS FOR REVOCATION OF THE  
GRANT  
AND  
IN THE MATTER OF AN APPLICATION FOR RECTIFICATION OF  
THE GRANT**

**BETWEEN**

**SCHOLASTIC WAKASA NASIMIYU ..... 1<sup>ST</sup> OBJECTOR  
ASHN SIKOLIA WANYONYI ..... 2<sup>ND</sup> OBJECTOR  
LUKA MAKOKHA WANYONYI ..... 3<sup>RD</sup> OBJECTOR**

**AND**

**SELINA NAMALWA MASONI ..... 1<sup>ST</sup> PETITIONER  
JANET KHISA MASONI ..... 2<sup>ND</sup> PETITIONER**

**RULING**

1. Selina Namalwa Masoni and Janet Khisa Masoni (1<sup>st</sup> and 2<sup>nd</sup> petitioners) filed a petition for letters of administration intestate on the June 27, 2005. The deceased Ben Masoni Wanyonyi died intestate and left the following surviving him:
  - a. Selina N. Masoni (widow)



- b. Janet K. Masoni (widow)
- c. Maurice Mukhwana
- d. Antony Simiyu
- e. Petro Sitati
- f. Clifton Wekesa
- g. Roy Sikolia
- h. Douglas Sikolia
- i. Joshua Simiyu
- j. Godwin Wafula
- k. Jesca Wakasa
- l. Maureen Naomi
- m. Clare Nangala
- n. Rose Cicilia
- o. Lilian Nabalayo
- p. Cynthia Nabalayo

2. The assets of the estate are to 2 parcels of land, Ndivisi/Khalumuli/952 & Ndivisi/Khamuli/638. A grant of letters of administration intestate was issued to the 2 petitioners on the November 3, 2005. A certificate of confirmation of grant was issued on the November 4, 2010. The deceased's assets were distributed as follows:

Schedule

Name description of property shares of heirs

Lr No Ndivisi/khalumuli/952

Selina Namalwa Masoni Whole

Lr No ndivisi/khalumuli/638

Maurice Mukhwana Masoni 3 acres

Anthony Simiyu Masoni 1 ½ acres

Selina Namalwa Masoni remaining portion

Lr No Kiminini/kiungani/7127/4

Janet Khisa Masoni whole

Municipality plots

Selina N. Masoni plot No 74.....7996/ss/91

Janet K. Masoni plot No 75.....7996/ss/92

Maurice Masoni plot No.....7996/SS/62



3. On the June 18, 2018 Scholastic Wakasa Nasimiyu, Aston Sikolia Wanyonyi & Luka Makokha Wanyonyi ,the objectors, filed a summons for revocation of the grant of letters administration issued to Selina Namalwa Masoni ( Selina ) & Janet Khisa Masoni ( Janet ) that was confirmed on the November 4, 2010. They claim that plot No 74 ... 7996/SS/91 & plot No 75 ... 7996/SS/92 be excluded and removed from the list of assets of the deceased's estate . They claim that the said two plots No 74 and 75 were fraudulently unlawfully included or sneaked into this cause and that they are not part of estate of Ben Masoni. That plot No 75 was in the name of Mary Goretti Nasimiyu Munoko who was alive at the time of the succession but died in February 2018 and that plot No 74 was part of the estate of Reuben Wanyonyi (deceased) and was administered in cause No 68 of 1997.
4. According to Scholastic Wakasa ( Scholastic) her late mother Mary Gorreti Nasimiyu was the registered owner of plot Webuye Block/plot No 75 which has commercial shops within Webuye town and that she collected rent from the tenants until her demise. The deceased is her uncle. She is the administrator of her late mother's estate.
5. Aston Sikolia Wanyonyi ( Aston) in his supporting affidavit filed in court on the June 18, 2018 avers that the late Ben Masoni is his brother and the petitioners his in law. That plot No 74 was the subject in his late father's estate in succession No 68/1997 when his brother Ben Masoni was alive. That the said plot doesn't form part of the estate of Ben Masoni. That the late Masoni assisted their father in paying rates but he did not own the plot 74.
6. On the July 4, 2018 directions were given that the matter be disposed off by way of *viva voce* evidence. Parties were to file their respective statements and the status quo was to be maintained. Parties complied.
7. On the July 5, 2018 Benjamin Barasa filed a replying affidavit. He claims that he holds a power of attorney donated by Selina Namalwa Masoni the 1<sup>st</sup> widow of Ben Masoni. According to her plots Nos 74 and 75 did not form part of the estate of her late father-in-law the late Reuben Wanyonyi Sikolia but are part of the estate of the deceased.
8. In a replying affidavit filed on the March 1, 2019, she depones that plots Nos 74 & 75 belong to her husband that her late father-in-law Reuben Wanyonyi Sikolia distributed his property amongst his sons and the late Ben Masoni inherited plot Nos 74 & 75 and didn't form part of the estate of the late Reuben Wanyonyi Sikolia. That the records at the local authority reflect the same.
9. Vide an order dated March 4, 2020 Justice Riechi ordered that the chief officer of the Lands, Urban & Physical Planning of Bungoma county government to provide (i) the records and current ownership of plots Nos 74 & 75 Webuye Municipality. The Chief officer Lands, Urban Physical Planning and Housing filed a report in court on the May 18, 2021 on the two plots No 74 and 75.

The report states as follows:

Report On Uns plot No 74 Webuye township

The plot number during allocation was unsurveyed plot No 74 Webuye Township. When the jurrey was carried out the plot assumed the number LR No 7996/91. On preparation of Registry Index Map (RIM) for Webuye Municipality the plot number became Webuye Municipality Block 1/31. The plot was allocated to Ben Masoni Wanyonyi but has since been transferred to Selina Namalwa Masoni through succession. The process was carried out as required and documents relating to the transfer, ownership and information required are attached to this report.

Report On Uns plot No 75 Webuye Township



The initial number for the plot was No 75 Webuye Township before it was surveyed. On survey it was assigned LR No 7996/92 and when the Registry Index Maps (RIM) for Webuye Municipality were prepared the new number for the same parcel of land is Webuye Municipality block 1/30. A close examination of the documents available indicate that plot initially belonged to Ben Musoni Wanyonyi but at some point it changed ownership to one Mary Nasimiyu Munoko. Documents relating to the transfer of ownership are not available in our records.

The following documents are what I have been able to lay my hands on:

- i. Copy of building plan for plot No 75 dated February 1, 1994 drawn by M. Odhiambo.
  - ii. Copy of registry index map (RIM) for Webuye Municipality block 1.
  - iii. Copy of draft valuation roll for Webuye Municipality Council of 2005.
  - iv. Copy of letter of response for claim of rates from town clerk Webuye Municipal council dated March 30, 2006.
  - v. Copy of letter from town clerk Webuye Municipal Council to Selina N. Mason dated December 10, 2007.
  - vi. Copy of demand for rates dated July 24, 2009 from G.O Borango and Company Advocates.
  - vii. Copy of demand notice for plot rates dated September 22, 2010 from Town Clerk Municipal Council.
  - viii. Copy of letter from the Chief Webuye Township location to County Government of Bungoma dated August 31, 2018.
  - ix. Copy of property rates statement for plot LR No 7996/92 dated May 10, 2021.
10. Parties testified in court partly before Justice Riechi and partly before me. Scholastic relied on her statement filed in court on the November 4, 2019. In it she avers that she the legal administratrix of her late mother's estate and that plot No 75 has never been the property of her late uncle Masoni. During cross-examination she admitted that she had not obtained a grant for her late mother's estate.
  11. Ashon too reiterated his statement. According to him Plot No 74 belonged to his later father and that Ben the deceased helped in the construction thereafter his father gave him the part of the shop that was leased by KCB Bank. He collected rent and recovered the amount he had spent during the construction. His father did not give Ben the plot No 74 was part of the assets in his late father's estate and Ben did not object.
  12. Selina adopted her affidavits and statement filed in court and the report from the chief lands officer filed in court. She claims that plot No 74 & 75 belonged to her husband and that the 2 plots were grabbed by her brothers in law and sisters in law.
  13. Parties filed written submission. I have considered the rival affidavits and submissions and the law too. The petitioner has challenged the *locus standi* of Scholastic on whether she has the locus to institute the objection proceedings. Scholastic is the daughter of Mary Goretti Nasimiyu a sister to the late Ben Masoni. Section 76 of the [Law of Succession Act](#) cap 160 provides that any interested party can file an application to revoke the grant. In my view Scholastic is an interested party as her late mother was the sister of the deceased and it's her claim that the plot 75 belongs to her late mother.
  14. The issue before me is whether plot Nos 74 and 75 should be removed from the certificate of confirmation that was obtained by the 2 petitioners. There is no dispute that the 2 plots formed part



of the estate of the late Reuben Wanyonyi Sikolia, the father-in-law to the 2 petitioners, and father to Ashon and late Mary. According to Ashon the 2 plots should be removed from the list of assets that form the estate of the deceased Ben Masoni. The objectors claim that plot No 74 was never transferred to Ben as claimed by the wife Selina and that plot No 75 was bought by Mary from Ben. Ashon claims that the 2 plots are still part of the estate of the late Reuben Sikolia. I have perused succession cause no. 68 of 1997. Plot No 74 within Webuye Municipality was part of the assets listed as belonging to the estate of Reuben Sikolia and not Ben. In the said cause the said plot was not allocated to Ben. It is not clear how plot 74 was transferred to Ben. The objector challenges the report from the Chief Land officer. The said report is not conclusive on plot no 75. The report indicates that the documents transferring the plot are not available. This court lacks the jurisdiction to interrogate the process used to assign the plots to the petitioners. The same can only be done by the Environmental & Land Court. In my view until that is done the 2 plots cannot form part of the assets of the deceased's property. Either party can move to the said court to establish ownership. Once that is done they are at liberty to return to this court for distribution of the same if it is found that the 2 plots belong to Ben.

15. Lastly the objectors seek a revocation of the grant issued. Section 76 of the *Law of Succession Act* provides that grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides. Considering that the objectors are only interested in plot No 74 and 75, the appropriate order is to remove the 2 plots from the certificate of grant dated the November 8, 2010. Plots 74 and 75 are hereby removed from the list of properties in the certificate of grant issued on the November 8, 2010. An amended grant to issue forthwith. Parties to bear their own costs.

**DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 25<sup>TH</sup> DAY OF APRIL 2023.**

**R.E.OUGO**

**JUDGE**

In the presence of:

Mr. Sichangi For the Objectors

1<sup>st</sup> and 2<sup>nd</sup> Petitioners in person

Counsel for Petitioner Absent

Wilkister C/A

