



In re Estate of Francis Were Nyangau (Deceased) (Succession Cause 414 of 2012) [2023] KEHC 3465 (KLR) (24 April 2023) (Ruling)

Neutral citation: [2023] KEHC 3465 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 414 OF 2012
RE ABURILI, J
APRIL 24, 2023**

IN THE MATTER OF

MARIA JUMA WERE 1ST APPLICANT

BARNABAS SIMBO WERE 2ND APPLICANT

RULING

1. The Petitioner Maria Juma Were and her son Barnabas Simbo Were were issued with a grant of letters of administration intestate to administer the estate of the deceased Francis Were Nyangao on July 9, 2012. The estate, from P&A 5 comprises of Land Parcel No Kisumu/Kanyakwar 'A' 805. The Petitioners were listed as the sole beneficiaries of the said estate, according to the introductory chief's letter dated June 26, 2012 written by Mr. Maurice O. Nyanga, Chief East Kisumu location.
2. The deceased died on April 25, 1985. A search certificate of land parcel Kisumu/Kanyakwar 'A' 805 was annexed dated July 2, 2012.
3. Regrettably, the administrators never distributed the deceased's estate as no summons for confirmation was filed and from the Notice of Motion dated February 15, 2023, one of the administrator's, Maria Juma Were, has since died on November 27, 2019 as per the annexed death certificate No 1272321.
4. Vide summons for confirmation dated January 24, 2013, the co-administrator Barnabas Simbo Were sought to have the grant issued to him jointly with his now deceased mother Maria Juma Were on October 16, 2012 confirmed.
5. Regrettably, in the schedule of distribution of the estate annexed, the applicant now brings on board and lists assets of the deceased which were never disclosed in P&A 5 filed on July 9, 2012 not even the parcel of land Kisumu/Kanyakwar 'A' 805 which was listed during the filing of the petition for grant is listed.
6. The applicant lists the following assets with him as the sole beneficiary without disclosing on oath where these properties were hidden as at the time that the grant was issued on October 16, 2012.



1. Kisumu/Kanyakwar 'A' 824
2. East Gem/Jina/924
3. East Gem/Jina 903

7. In addition, no certificates of official search are annexed to the affidavit to prove that those assets were or are in the name of the deceased Francis Were Nyangau. That being the case, I find that the summons for rectification of grant dated January 24, 2023 and the Notice of Motion dated February 15, 2023 seeking that the applicant who has since obtained a limited grant to administer the estate of his late mother Maria Juma Were, and him being her co-administrator be substituted as the sole administrator cannot be allowed to stand. This is because there was serious non disclosure of material facts being, the assets of the estate of the deceased Francis Were Nyangau as at the time of petitioning for grant which was issued on October 16, 2012 only for the assets to spring up during confirmation and after the demise of the widow, without any evidence that the 'new' assets now form part of the estate of the deceased Francis Were Nyangau.
8. Accordingly, I find the application dated February 15, 2023 and summons for confirmation of grant dated January 24, 2023 untenable. In addition, I find that the grant of representation issue on October 16, 2012 was materially defective. The same is hereby recalled into this court and annulled and revoked.
9. The applicant to petition afresh for letters of administration intestate of the estate of the late Francis Were Nyangau.
10. The applicant to be notified accordingly.
11. This file is hereby closed.
12. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 24TH DAY OF APRIL, 2023

R E ABURILI

JUDGE

