



REPUBLIC OF KENYA



**KENYA LAW**  
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**Murumba v Natili (Succession Cause 213 of 2015)  
[2023] KEHC 18759 (KLR) (26 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18759 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 213 OF 2015**

**PJO OTIENO, J**

**MAY 26, 2023**

**BETWEEN**

**CHARLES KASKON MURUMBA ..... PETITIONER**

**AND**

**JOSEPH NATILI ..... APPLICANT**

**JUDGMENT**

1. The dispute for determination by the court regards the distribution of estate of deceased Laban Murumba Lisungu, comprised in land parcel registration No. Isukha/Kambiri/1394 measuring 27.4 hectares (68.5 acres). The deceased died intestate on June 20, 2000. The deceased at the time of his death was polygamous having got married to two wives; Mukabana Sarah and Agnes Isiche. The deceased was survived by twelve children, four from the first house and 8 from the second house.
2. The respondent, Charles Murumba, applied for grant of letter of administration to administer the estate and thereafter distribute same amongst the deceased's survivors. The grant was issued on 8/06/2017 and later confirmed on November 7, 2017.
3. The applicant, Joseph Natili alleged having been left out among the beneficiaries in the of the succession cause and has now approached the court on the same claiming that, he being one of the deceased's sons, is a rightful beneficiary of the estate and that the respondent action of not including him on application for grant of letters of administration signified an act of fraud.
4. It is the applicant/Objector's contention that the grant be revoked and annulled following its fraudulent procurement. He stresses being one of the deceased's sons and was lawfully entitled to inherit his father's estate and that the respondent's act of not including him was untenable and illegal. Further, he claims that the respondent initiated the process of acquisition of grant of letters of administration without involving him and he only realized when the petitioner was in the final stages of acquiring and transferring ownership of the said land parcel to himself and his other siblings. He



asserts that the petitioner obtained the grant of letters of administration fraudulently by concealing material facts to the court. He reiterates that the deceased at the time of his death had sold portions of the land measuring 6.25 acres to liabilities whom he has listed adding that the deceased also before his demise subdivided the land to his children and placed boundaries on the land for demarcation and all along each had been staying with his respective liabilities in their apportioned portions peacefully until the respondent introduced the interference. He reiterates the grounds on the face of the application in the sworn affidavits in support of summons for revocation and annulment of the grant.

### **Summary of the administrator/respondent's case**

5. When served, the Administrator swore a Replying Affidavit and a Replying Affidavit to the Further Affidavit and all maintained that in discharge of his duty of administration, he ensured all the beneficiaries were part and parcel of the succession cause and fully participated to their satisfaction. He, however, concedes that Joseph Natili's name was omitted but attributes the failure to an error in typing and an oversight by the court, which the court ought to rectify even on own motion. He then adds that the deceased, personally, before his demise divided his remaining land of the 68.5 acres exclusively among his six sons and demarcated same by boundaries drawn by planted trees.
6. It is therefore his claim that he continues to holds in trust, land measuring 6.25 acres which belonged to the vulnerable liabilities whose names were missing in the grant and who had transacted with the deceased. He then adds that owing to the fact that the objector was not willing to settle his two sons Sukas Shikanga and Zadock Natili on their ancestral land due to lack of their mother's intervention, it was his duty to ensure that they were all apportioned their shares (from their father's portion) upon which they had constructed their homes. He also asserts that he had an understanding with two of the deceased's daughters; Joyce Kwoma and Linet Alusa and was going to ensure that they too benefited from the said estate from the one-acre portion he claims to have been set aside by the deceased for all his daughters. He opposes the applicant's summons for revocation and annulment of the grant and prays that the same be dismissed.
7. The court directed parties to attempt negotiation but while all beneficiaries were cooperative one Charles Kaskon Murumba was uncooperative and no settlement was thus reached.

### **Analysis and Determination**

8. Upon anxious scrutiny and perusal of both the applicants and respondent's submission as well as their sworn affidavits, I find the underlying issue for determination by this court to be two;
  - i) Whether it's necessary to revoke the grant issued to the petitioner?
  - ii) what is the appropriate mode if distribution of the deceased's intestate estate?

### **Whether to revoked or annulled the grant**

9. To succeed in every application for revocation or annulment of grant, the applicant is duty bound to prove to the satisfaction of the court, at least one of the grounds stipulated by section 76 of the [\*Law of Succession Act\*](#). Here, it is the applicant's contention that the respondent never included him as one among his late father's beneficiaries, then stresses that being one of the deceased's sons, he was lawfully entitled to inherit from his father's estate and the respondent's act of not including him was untenable and illegal. He further submits that the respondent initiated the process of acquisition of the grant without involving him and he only later realized when the respondent was in the late stages of acquiring and transferring ownership of the said land parcel to himself and some of his other siblings.



10. The respondents on the other side concedes to the claim of exclusion by the applicant's claim stating that the objector was duly named as a beneficiary of the estate and that the failure of his inclusion in the grant was as a result of an oversight by the court in typing the which he contends, the court was supposed to rectify. Somehow, and equivocally, he asserts that even though the applicant wasn't included in the grant his two sons were and were apportioned two acres.
11. The Court has perused the petition and entire record and confirms that the Objector was indeed named as a beneficiary in the petition but not in the certificate of confirmation of grant. It is therefore determined that the exclusion in the grant is a mistake capable of remedy by rectification and not revocation of grant.
12. That the Objector is a son and thus one entitled to get a share of the estate is not denied even by the Administrator who says the certificate of confirmation was issued in error and ought to be corrected to include him. He shall be included in the scheme of distribution for which reason it is ordered that the certificate be rectified.

### **Appropriate mode of distribution of deceased's estate**

13. From the evidence on record, the deceased died intestate and it therefore the estate and its distribution thereof is subject to the rules of intestacy. Both parties take the position that the deceased before his demise sold a portion of the land to known and acknowledged liabilities then subdivided the remainder to his children and placed boundaries on the land by planted trees. Each of the children has been staying on respective portions of the land as the respective liabilities also occupy their apportioned shares till the objector brought about interference. Even though the respondent does not dispute the fact that the said land parcel had already been shared out by the deceased he nevertheless seeks that the same be distributed afresh.
14. The learning of the Court is that the Court only resolves disputes and have no mandate in a matter where parties agreed. Here there is an agreement that the deceased shared out the land and planted demarcations which remain on the ground to date. In fact, even though no evidence on acreage of each beneficiary is disclosed, the Objector asserts that he has seven acres on the ground as opposed to two the Administrator wants him to get.
15. Even the land due to the liabilities is known and agreed to measure 6.25 acres. The Court is bound to respect the wishes of the deceased on how his children share his possession after death.
16. In *Paul Kirubi -vs- Francis Wanjohi* [2009] eKLR the Court in upholding the wishes of the deceased said: -

“Unless it can be demonstrated that those wishes of the deceased as captured in the black book were illegal, unfair, discriminatory and unjust to the beneficiaries or some of them, such wishes ought to be respected in my view. Nothing has been brought to my attention that remotely suggests that the deceased's was biased, unfair and or discriminatory against any of the beneficiaries in the manner he wanted his estate shared out on his demise. In any event, it would appear that some of the beneficiaries were aware of the contents of the black book, during the deceased's lifetime. If they were disenchanted with the distribution they should have taken it up with him.”
17. Even though the parties are not clear on how much land each beneficiary got from the deceased, the evidence is consistent that there are demarcations on the ground including the portion sold out. To this Court mere failure to survey the land during his life should not be the only reason to disrupt and



disrespect the wishes by the deceased. In coming to this decision, I consider Section 41 to sanctify the deceased wishes.

18. That no survey has been conducted to ascertain the exact land each holds, shall be remedied by an order that parties jointly commission a licensed Surveyor to visit the land and determine portions occupied by each of the beneficiaries, the 6.25 acres sold to the admitted liabilities and the one acre said to have been reserved for the girls. That be done within 60 days.
19. The effect is that it is the order by the Court that the estate be distributed in accordance with the wishes of the deceased expressed and implemented during his life time by way of established demarcations.
20. Being a family dispute, each party shall bear own costs.
21. This matter shall be mentioned in Court on October 16, 2023 to confirm compliance and for further orders including the issuance of Certificate of Confirmation of Grant.

**DATED, DELIVERED AND SIGNED AT KAKAMEGA THIS 26<sup>TH</sup> DAY OF MAY 2023.**

**PATRICK J. O. OTIENO**

**JUDGE**

**In the presence of:-**

No appearance for the Petitioner/Respondent

No appearance for the Objector/Applicant

Court Assistant: Polycap

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