



REPUBLIC OF KENYA



**In re Estate of Zabon Maruti Mola (Deceased) (Probate & Administration
3 of 2017) [2023] KEHC 23121 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 23121 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
PROBATE & ADMINISTRATION 3 OF 2017
REA OUGO, J
SEPTEMBER 28, 2023**

IN THE MATTER OF THE ESTATE OF ZABON MARUTI MOLA (DECEASED)

BETWEEN

BEATRICE NANJALA MOLA 1ST PETITIONER

MERCYLINE NASIMIYU MOLA 2ND PETITIONER

CAROLINE NABUKANDA MOLA 3RD PETITIONER

AND

PRISCILLA NANYAMA WETUNGU OBJECTOR

RULING

1. Priscilla Nanyama Wetungu (the Objector) filed an application dated the 9th March 2020 seeking to revoke the grant issued to Beatrice Wanjala (1st petitioner), Carolyne Nabukanda Mola (2nd petitioner) and Mercyline Nasimiyu Mola (3rd petitioner). She also seeks that the court makes her a co -petitioner / 4th administrator since she is one of the wives of the deceased and is entitled to a share of the deceased's estate.
2. Zablon Maruti Mola (the deceased) died on the 15th May 2015. Beatrice Nanjala Mola and Joel Wanjala filed a petition for letters of administration intestate on the 14th February 2017. On the 12th March 2020 a grant of letters of administration was issued to Beatrice Wanjala Mola, Caroline Nabukanda Mola and Mercyline Nasimiyu Mola as administrators of the estate of Zablon Maruti Mola.
3. The Objector filed the following affidavits and adopted them as her evidence, an affidavit dated 9th March 2020 and another dated 6th September 2022. She depones as follows; she was a wife of the deceased. She married the deceased in 1996 under Bukusu Customary Law and 4 heads of cattle was paid as her dowry. She was his 3rd wife. She bore him one child namely Esther Khaoma Maruti. The deceased had five wives namely Loyce Nandako, Beatrice Nanjala, Priscilla Nanyama Wetungu,



- Meryline Nasimiyu and late Jones Nanyama Mafuta. By the time she married the deceased the other wives had left him. That when Beatrice decided to return home she found it unbearable to stay in the home so she rented her own house with the full blessings of the deceased. The deceased then married Mercyline who after him after having 3 children with the deceased. that Beatrice welcomed her in the home after the deceased died and they collected the deceased's body from the mortuary. That the deceased paid 3 cows and some money to her father. During cross examination she testified that the deceased did not build for her. That she has nothing to show that she got married. That she has 2 other daughters. She was not married before. That she attended the burial, as a widow. She denied that her daughter Esther lived with Beatrice. That her parents had the marriage agreement. Her parents have died. That there were witnesses but none have sworn any affidavit. That she was not aware that her daughter was listed as a beneficiary of the deceased.
4. Beatrice Wanjala Mola adopted on her affidavit dated 22nd February 2022 as her evidence. She states as follows; the deceased was legally married to her in the year 1995 after divorcing Loice Nandako Kibaba. The nature of the marriage between her and the deceased was a civil one and it was presumed to be monogamous in nature. That the objector was not a wife of the deceased and that the objector has never been in occupation of the deceased's matrimonial home and that her assertions that she left her home and that she stayed in the matrimonial home are untrue and a lie. That Esther Khaoma Mola is the daughter of the deceased and she is included in the list of beneficiaries. That the estate of the deceased pays for Esther's fees. That the objector was a mistress of the deceased and was not being provided for by the deceased nor did she depend on the deceased. That she is not a beneficiary of the estate. During examination Beatrice testified that the deceased did not build a home for the objector nor was she introduced as a wife. That the objector's daughter stayed with her in 2006.
 5. Mercyline Nasimiyu Mola relied on her replying affidavit dated 5th November 2022 and adopted it as her evidence. According to her the deceased was survived by three wives namely Loice Nandako, Beatrice Nanjala and herself as confirmed in the lufu minutes. That the objector was not married to the deceased but she had child with the deceased called Esther Khaoma Maruti. During cross examination she denied being chased away by the deceased nor was she chased away during the burial. that she got married to the deceased in 1999. That the objector was a friend of the deceased. and that Esther was acknowledged during the 'lufu' ceremony.
 6. Japhether Sitati Werunga adopted his replying affidavit filed on the 6th November 2022 as his evidence. He testified that the deceased was his cousin and they belong to the Bamusomi clan of the Bukusu Sub-tribe and he conversant with Bukusu customs. That when the deceased passed on he was the secretary of his, 'lufu' which is a meeting held 3 days after the burial touching on all affairs of the deceased during his lifetime. That Priscilla was not married to the deceased as confirmed by the minutes of the 'lufu'. That the deceased left behind three wives namely , Beatrice Nandako, Beatrice Nanjala and Mercyline Nasimiyu . During cross examination he denied that he was lying that he was the secretary during the lufu meeting. That the deceased paid cows for the child so that she come be accepted in the home to stay but not for a wife. It That the 3 wives were recognized during the lufu meeting.
 7. None of the parties file submissions. The only issue for determination is whether the objector has proved that she was a wife of the deceased. There is no dispute that the 3 petitioners are the wives of the deceased. It is also not in dispute that the Esther Khaoma Maruti is the daughter of the deceased and that the objector is her mother.
 8. In law he/she who alleges a fact has a duty to prove the fact alleged (see Section 107 and 109 of the *Evidence Act* Ca. 80 law of Kenya). The objector claims that she was the deceased's wife. That she was married in the year 1996 under Bukusu customary law and that four herds of cattle were paid as her dowry. Her parents are now deceased. They had the agreement. According to the petitioners the



objector was not a wife of the deceased. They recognize that Esther is the deceased's child. That during their lufu meeting which is held after the burial of a deceased the objector was not recognized as a wife.

9. The objector has a duty to prove that she was married to the deceased. Her evidence that the deceased paid dowry to her parents was not supported by any written agreement or even evidence of persons who were present during the dowry negotiations. Neither has she tendered any evidence from other persons to demonstrate that she lived with the deceased as a wife, for the court to presume that there was a marriage between her and the deceased. She admitted that the deceased never built her a home. She had a child with the deceased. That does not make her a wife. It was necessary in light of the evidence adduced by the petitioners for her to adduce evidence to support her case. I am persuaded that she was not a wife of the deceased. Esther a child she had with the deceased has been recognized as beneficiary. I therefore find no merit in the application for revocation of the grant. The application is dismissed. Each party to bear its own costs.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS DAY 28TH SEPTEMBER 2023.

R.E.OUGO

JUDGE

In the presence;

Priscilla Nanyama Wetungu/Objector – Present

Beatrice Mola – Present

Mercyline Mola -Present

