



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Alfred Wadidwa Walekhwa (Deceased) (Succession Cause
2 of 2020) [2023] KEHC 24069 (KLR) (27 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24069 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 2 OF 2020
WM MUSYOKA, J
OCTOBER 27, 2023**

RULING

1. The deceased herein died on 23rd March 2020. The Assistant Chief of Mjini Sub-Location, Busia, in a letter dated 4th August 2020, indicates that the deceased had a large family, comprised of 3 houses. The names of his 3 wives are Sorophine Makokha Walekhwa, the late Teresa Ajiambo and the late Ruth Nangene. The children of Sorophine Makokha Walekhwa are listed as 10, being 6 sons and 4 daughters, namely Angelbertha Nagira, the late Leonard Wadidwa, Margaret Adongo, Richard Okello, Alexander Khamala, Robert Sisia, Philip Tambithi, Patrick Juma, Silvia Nanjala and Caroline Narocho. The late Teresa Ajiambo had 1 child, a daughter, Mary Beatrice Nabwire. The late Ruth Nangene had 5 children, 2 sons and 3 daughters, being Robert Juma, Magdalene Nakhasokho, Elizabeth Lyaka, Lydia Nabwire and Geoffrey Walekhwa. He is said to have died possessed of Bukhayo/Mundika/2802 and 8662.
2. Representation to the estate was sought by Sorophine Makokha Walekhwa and Patrick Juma Walekhwa, in their capacities as widow and son of the deceased, respectively. They listed the survivors of the deceased as the 17 individuals listed in the letter by the Assistant Chief. It was also indicated that he died possessed of the 2 assets listed in that letter, plus moneys at accounts with the Family Bank, Kenya Commercial Bank and Post Bank. It was stated that he had no liabilities. The grant sought was of letters of administration with written will annexed, on grounds that the deceased had died testate, having made a written will, dated 16th June 2019. Letters of administration with written will annexed were made to the 2 petitioners, on 30th September 2020, and a grant was duly issued, of even date. I shall refer to Sorophine Makokha Walekhwa and Patrick Juma Walekhwa as the administrators.
3. A summons for revocation of grant was filed herein, on 10th February 2022, dated 22nd December 2022, by Robert Juma Walekhwa, who I shall refer to as the applicant. The grounds, set out on the face of the application, are that his name had been left out as a survivor of the deceased and a beneficiary of his estate; the petition was filed without consents of all family members, particularly that of the applicant, as the eldest son in the 3rd house; the petitioners were all from the 1st house; Bukhayo/Mundika/2802 belonged to the applicant; among others.



4. In the supporting affidavit, sworn on 11th February 2022, the applicant avers that the court was misled, as the administrators left the applicant and other family members out of the succession process, for their consents were not obtained when representation was being sought. He complains that representation was sought by petitioners from the same house, despite the deceased having more than 1 house. He asserts that the purported will was contested, as it had a signature which did not match that of the deceased. It is also argued that some of the assets distributed, such as Bukhayo/Mundika/2802, had already been given to him, after he paid the deceased a sum of Kshs. 600,000.00, as per the sale agreement attached, and that the deceased had already confirmed the sale to the family, as per a letter attached. He further argues that a number of wills emerged, purportedly executed by the deceased, which were contested by family members after the same were presented to them, on various grounds, around the contents and the execution of the wills. He states that the signatures of the deceased and of the witnesses were purportedly appended at different times. He avers that the administrators were bent on taking Bukhayo/Mundika/2802 away from him, and to refund to him the money he had paid to the deceased for it. He would like to be made one of the administrators of the estate. The documents attached to the said affidavit are a letter-cum-sale agreement dated 10th July 2014, in which the deceased acknowledges receiving Kshs. 600,000.00 from the applicant; another letter-cum-sale agreement dated 18th November 2019, between the applicant and the deceased, over Bukhayo/Mundika/2802; and minutes of a family meeting held on 28th March 2020.
5. Sorophine Makokha Walekhwa, the administratrix, swore the affidavit in reply, on 7th March 2022, and filed it herein on 9th March 2022. She asserts that she is the only surviving widow of the deceased and the first wife, making her rank in priority over everyone else in entitlement to administer the estate of her late husband. She asserts further that the deceased died testate, and not intestate, and that the applicant had been disclosed in the petition as a survivor and beneficiary.
6. During the pendency of the summons for revocation of grant, the administratrix filed a summons for confirmation of grant, on 1st November 2022, dated 31st October 2022. She avers that the deceased had left a written will, and that she shall distribute the estate, amongst the children, in accordance with it. She further avers that the deceased had made lifetime or inter vivos distribution of his assets amongst his children. She proposes to devolve both Bukhayo/Mundika/2802 and Bukhayo/Mundika/8662 to herself absolutely.
7. The applicant, Robert Juma Walekhwa, then reacted to the summons for confirmation of grant, by filing a replying affidavit, sworn on 19th January 2023, filed herein on even date. He avers that the will relied on, which is not even attached to the application, is contested, and that there ought to be a full hearing on its validity. He prays for the summons for confirmation of grant to be dismissed.
8. I see on record a number of witness statements; by Susan Nabwire, Robert Juma Walekhwa and Geoffrey Walekhwa.
9. The matter came up for hearing several times, and was put off, once for the parties to attempt out of court settlement, and on 2 occasions because the parties were not ready for viva voce evidence. Eventually, on 19th June 2023, I directed that the 2 applications be canvassed by way of written submissions. Both parties did file their respective written submissions, and I allocated the matter a date for ruling.
10. I have read the file herein, for the purposes of writing the ruling, and I am persuaded that the only way to deal with the issues is through viva voce evidence. The main issue is the validity of the will upon which the grant herein is predicated. Whether the administrators were properly appointed, will depend on whether the will, which was the basis of their appointment, was valid; and whether the grant ought to



be confirmed will depend too on its validity. A trial has to be conducted on the validity of the said will, for the issues arising cannot be canvassed by way of submissions. There is need to take oral evidence on how the will was made, where it happened, who was present, and who saw the deceased sign the document. The persons who witnessed the execution of the will, said to be Herbert Egesa Odoli and Wilson Bwire Samba, have not sworn and filed affidavits herein, on the circumstances under which they appended their signatures on the alleged will on 23rd July 2019 and 29th September 2019. They will have to testify, together with any person who claims to have been present when the deceased made the will.

11. The applicant has raised issues in his application for revocation, around the signature on the alleged will not being that of the deceased, there being several wills, about the deceased having sold Bukhayo/Mundika/2802 to him, and about the family holding meetings about the will and Bukhayo/Mundika/2802. Those alleged wills have not been placed on record, and the issue as to whether the deceased sold Bukhayo/Mundika/2802 to the applicant is contested, for that property has been disposed of by the contested will, and the administratrix is proposing to devolve it upon herself. These are issues that can only be resolved through oral evidence. The applicant has to testify on the alleged several wills, the alleged sale of Bukhayo/Mundika/2802 to him, and the alleged meetings alluded to in his affidavit. He will also need to provide concrete evidence about the signature on the alleged will not being that of the deceased.
12. In the affidavit sworn in support of the summons for confirmation of grant, apart from averments on the will, the administratrix alleges that the deceased had distributed property to each of the children during his lifetime. These are facts that she will need to testify on orally, to give details or particulars on who was given which land and when.
13. Consequently, I cannot determine the 2 applications on the basis only of written submissions. The matter shall proceed to viva voce hearing, on a date I shall allocate at the delivery of this ruling. The parties better be ready, because I shall be in no mood to allow any adjournment. The parties shall also file witness statements of any individuals that they would wish to call as witnesses, and lists and bundles of any documents that they would wish to rely on and place on record as evidence at the hearing. These should be done before the hearing date. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 27TH DAY OF OCTOBER 2023

WM MUSYOKA

JUDGE

