



REPUBLIC OF KENYA



**In re Estate of Maruti Makure (Deceased) (Succession Cause  
77 of 2006) [2023] KEHC 27146 (KLR) (19 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27146 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
SUCCESSION CAUSE 77 OF 2006  
REA OUGO, J  
DECEMBER 19, 2023  
IN THE MATTER OF THE ESTATE OF MARUTI MAKURE (DECEASED)**

**IN THE MATTER OF**

**PATRICK MACHIMBO WANYONYI ..... 1<sup>ST</sup> ADMINISTRATOR  
METRENE WAMBANI MUTOLOLO ..... 2<sup>ND</sup> ADMINISTRATOR  
BILIAH NANGILA WAFULA ..... 3<sup>RD</sup> ADMINISTRATOR**

**RULING**

1. Maruti Makuke died on the 8<sup>th</sup> of October 1974. On the 30<sup>th</sup> June 2006 Daudi Wanyonyi Maruti filed a petition for Letters of Administration Intestate. He is the son of the deceased. In his affidavit in support of the application, he states that the deceased left one asset Bokoli/ Chwele/251. He listed the following persons as beneficiaries to the estate of the deceased Maruti Makuke namely; Daudi Wanyonyi Maruti, Wafula Maruti, Wisly Wanyama Wafula, Patrick Machimbo Wanyonyi, Jeridah Nabangala Wafula, Christopher Wanabisi, Choice N. Nyongesa, Susy N. Wafula, Elizabeth N. Wafula, Gladys N. Juma, Lydia Nekesa and Mary N. Wafula.
2. On the 4<sup>th</sup> of December 2006 a grant of letters of administration was issued to Daudi Wanyonyi Maruti. On the 10<sup>th</sup> June 2010 Patrick Machimbo Wanyonyi applied to substitute Daudi Wanyonyi Maruti who had died on the 3<sup>rd</sup> of September 2007. He also sought that the grant issued on the 4<sup>th</sup> of December 2006 to Daudi to be confirmed. In his application, he proposed the mode of distribution to each beneficiary. A grant was issued to Patrick Machimbo Wanyonyi on the 8<sup>th</sup> of November 2010. The grant was confirmed and a certificate of the grant was issued on the 27<sup>th</sup> of October 2010. Wesley Wanyama, Patrick Machimbo, Jeridah Nabangala Wafula and Christopher Wanambisi were to inherit from parcel no. 251 as per the respective acreage shown in the certificate of confirmed grant. Choice, Susy, Elizabeth, Gladys, Lydia, and Mary were to share one care from parcel no. 251.



3. On 22/12/2010 Wesley Wanyama Wafula applied to revoke the grant that was confirmed on the 26<sup>th</sup> October 2010.
4. On the 15<sup>th</sup> of March 2022 a grant of letters of administration was issued to Patrick Machimbo Wanyonyi and Wesley Wanyama Wafula. This was after the parties recorded a consent on 8/9/2021. Part of the consent was that the fresh application for confirmation of the grant be filed within 21 days setting out the beneficiaries and mode of distribution.
5. On the 28<sup>th</sup> November 2022 a motion dated the 26<sup>th</sup> November 2022 was filed by Metrene Wambani Matolotolo and Billiah Nangila Wafula seeking to substitute Wesley Wanyama Wafula who died on 20/7/2022. A grant of letters of administration was issued to the 2 applicants on the 8<sup>th</sup> December 2022 and another was issued to Partick, Metrene and Billiah on the 13<sup>th</sup> December 2023 to correct the one issued on 8/12/2022.
6. On the 13<sup>th</sup> of February 2023 Patrick applied to confirm the grant that was issued on the 13<sup>th</sup> of February 2023. He proposed a mode of distribution in his affidavit in support of the application. Billiah filed an affidavit of protest vide her affidavit filed on the 9<sup>th</sup> March 2023 dated the 9<sup>th</sup> March 2023 she has proposed a different mode of distribution. The application dated the 13<sup>th</sup> of February 2023 is the subject of this ruling.
7. The matter proceeded by way of viva voce evidence. The protestors were heard and thereafter the 1<sup>st</sup> Administrator Patrick M. Wanyonyi. The parties adopted their affidavits filed in court.
8. Billiah in her affidavit of protest avers as follows that; she is the administratrix of the estate of Wesley Wanyama Wafula jointly with Metrene Wambani Matolotolo. Patrick is not entitled to any share of Land Parcel No. Bokoli/Chwele/251. It is within her knowledge that the said parcel of land is the property of the estate of Maruti Makuke and that the objectors are the only ones entitled to a share in the same. She is also aware that the family and the beneficiaries of the estate of the deceased had sat and agreed that the said parcel of land be distributed as follows;
  - i. Matrene Wambani Matolotolo & Billiah Nangila Wafula to inherit four (4) (to hold in trust for the estate of Wesley Wanyama Wafula)
  - ii. Joyce, Suzy, Elizabeth, Gladys, Lydia, and Mary to jointly inherit one (1) acre, and Christopher Wanambisi to inherit two (2) acres.
9. Jamin Wekesa Wepukhulu adopted his witness statement filed on the 3<sup>rd</sup> of May 2021. In the said statement he avers as follows; Wafula Maruti is his paternal uncle. The petitioner is the brother of Wafula Maruti. He knows that all land is comprised of LR No. Bokoli/ Chwele 273 belongs to the petitioner's father while LR No. Bokoli/ Chwele/ 251 was allocated to the objectors' father. There was a written agreement in possession of the petitioner that in LR No. Bokoli/Chwele/ 251 the sisters of the Objector were to be given one acre and Christopher Marambu Nambisi 2 acres since he is the buyer. He was a witness to the agreement as a vice chairman of the clan. Both parcels of land were gifts from the parents and no one bought any land. The 4 remaining acres in parcel no. 251 belongs to the objector. The objector was born in parcel no. 251 and has been in occupation since the demise of his parents. Patrick fraudulently obtained letters of administration without the knowledge and consent of other beneficiaries and the clan. He supports the application to revoke the grant. The petitioner should not inherit from parcel no. 251 as he has land parcel no. Bokoli/ Chwele/ 273 measuring 11 acres.
10. Patrick Machimbo Wanyonyi the 1<sup>st</sup> administrator filed a statement on the 23<sup>rd</sup> May 2023. He adopted the said statement as his evidence in chief. He states as follows in the said statement that; Maruti Makuke is his paternal grandfather. He had one child namely Wanyonyi Maruti. Wanyonyi Maruti had



2 sons namely David Wanyonyi Maruti alias Daudi (his father) and William Wafula, father of Wanyama Wafula alias Wesley. The persons who are entitled to parcel no. 251 are David and William who are both deceased. That his father Daudi before he died had purchased his land Bokoli/Chwele/ 273 as shown in the green card dated 13/4/2015. Since parcel land no. 251 was ancestral land Daudi and Wesley agreed that he would carry out the succession. Since his father had purchased his land he decided that he only gets one acre from the ancestral land. He came into the matter when his father died he was to complete succession and inherit his father's one acre. Wesley too died and therefore the only persons who are entitled to the estate are himself and Wesley. Wesley sold part of his share of 2 acres to Christopher Wanambisi. Succession was done and transmission was registered on 16/10/2010 as shown in the certificate of official search dated 9/5/20211. Up to date parcel no. Bokoli/ Chwele/251 is registered as shown in the official search of 20/4/2011, in the names of Wesley, Patrick, Jeridah, Christopher and their sisters. He is also a beneficiary and sole inheritor of his father's share of one acre. When confirmation was done consultation was done amongst all the family members and Wesley was present and participated. Christopher a purchaser bought 2 acres from Wesley which forms part of the estate of Wesley and the 2 protestors are left with 2 ½ acres to hold in trust of the family of Wesley Wafula. He is entitled to one acre, which was meant for his father. On cross-examination, Patrick admitted that he stays in parcel no 273 and that parcel no. 251 belonged to his grandfather. He has not used his portion since it was given to him. His father is entitled to the one acre he was given.

11. Mr. Wattangah advocate for Partick filed written submissions. The protestor's counsel chose to rely on the evidence that was adduced. The written submissions reiterate the evidence adduced by Patrick. The 1<sup>st</sup> petitioner urged the court to adopt his mode of his distribution.

### **Analysis and Determination**

12. I have considered the evidence adduced, the submissions, and the law, the *Law of Succession Act*. I have also carefully perused the court file and the proceedings. After the grant was confirmed on 27/10/2010 Wesley moved to court to have the grant that was issued to Patrick revoked. His reasons for seeking the revocation were that Patrick had his land in parcel no. 273, that he was the only one entitled to parcel no. 251 and that he had all along lived there. That he never consented to the mode of distribution as was proposed by Patrick. After the death of Wesley, the protestors took over and are seeking 4 acres from the estate of the deceased.
13. The only issue that I have to decide is whether the protestors are entitled to 4 acres and whether the 1<sup>st</sup> petitioner should not inherit one from parcel no. 251. There is no dispute that the 1<sup>st</sup> petitioner and Wesley are the sons of the Daudi and William who were the sons of Wanyonyi Wafula the only son of the deceased Maruti Makuke. Being the sons of Wanyonyi Wafula who is now deceased, they are both entitled to inherit from the estate of Maruti Makuke. There is no dispute the deceased owned parcel no. 251. There is also no dispute that Patrick owns parcel no. 273 which he claims was bought by his father Daudi. This has not been challenged by the protestors. The protestors did not file an affidavit in response to Patrick's affidavit that Christopher bought 2 acres from Wesley. Patrick has explained that the share of Wesley was reduced because he sold two acres to Christopher. Jamin Wekesa stated that there was a written agreement that the sisters were to get one acre and Christopher 2 acres. The protestors did not produce the said written agreement. The issue of 2 parcels of land being a gift from the parents has not been established. I note that Wesley never mentioned the written agreement in his affidavit when he sought to revoke the grant in the earlier application. The green card produced by the 1<sup>st</sup> petitioner shows that David Wanyonyi has been the proprietor of land parcel no. 273 from the 25.8.1964. The said land was later subdivided into other parcels. LR Bokoli/ Chwele/251 is ancestral land. The 1<sup>st</sup> petitioner being the son has Wanyonyi Wafula is entitled to a portion of the said land. He is seeking one acre of the said land. He has explained that Wesley sold part of his land to Christopher.



I am persuaded that the mode of distribution proposed by the 1<sup>st</sup> petitioner is a fair distribution. The land parcel for distribution is LR Bokoli/ Chwele/251.

14. The grant of letters of administration issued on the 13<sup>th</sup> of February 2023 is confirmed as follows;
  - i. Metrene Wambani Matolotolo & Billiah Nangila Wafula -2 ½ Acres
  - ii. Patrick Machimbo Wanyonyi -1 Acre
  - iii. Jeridah Nabangala Wafula - ½ Acre
  - iv. Christopher Wanambisi - 2 Acres
15. This being a family matter each party to bear its costs.

**DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 19<sup>TH</sup> DAY OF DECEMBER 2023.**

**R.E. OUGO**

**JUDGE**

In the presence of;

Mr. Wattangah -For the 1<sup>st</sup> petitioner

Miss Masengeli -For the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners

