



**In re Estate of Wamalwa Nangendo (Deceased) (Succession Cause
102 of 1998) [2023] KEHC 27094 (KLR) (18 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 27094 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 102 OF 1998**

DK KEMEL, J

DECEMBER 18, 2023

IN THE MATTER OF THE ESTATE OF WAMALWA NANGENDO (DECEASED)

BETWEEN

HUDSON NYONGESA JUMA OBJECTOR

AND

MOSSY K MUCHANGA PETITIONER

JUDGMENT

Background

1. This succession cause revolves around the estate of one Wamalwa Nangendo who is said to have died on the 17th of May 1974 at Sigalame. The 1st Administrator/Petitioner moved the Court for grant of letters of administration in July, 1998. His application was neither stamped nor paid for as no receipt was on the Court record. The Petition was filed in the Principal Magistrates Court. The matter was gazetted on the 7th of August 1998 and on the 17th March, 1999 a grant of letters of administration intestate was issued.
2. In the application, the 1st Administrator/Petitioner, Mossy Khaemba Muchanga, gave his name as the only survivor of the estate of the deceased. He did not state the relationship he had with the deceased nor did he obtain consent from any other person who has an equal right to the estate or ranks in priority to him in the application for grant of representation.
3. In 1999, two persons now deceased who were brothers of the deceased were alleged to have written letters of consent to the issuance of a grant in favour of the 1st Administrator/Petitioner.
4. At the hearing, other than the 2nd Administrator/Objector and the 1st Administrator/Petitioner, no other witnesses were called. This matter first came to court in 1998, 25 years ago and for one reason



- or the other parties have not been in a hurry to dispose of the same necessitating this court to insist on hearing the same.
5. The 1st Administrator/Petitioner's case is that he stayed with his childless uncle until his death. That the uncle bequeathed the land subject of this petition measuring approximately 12 acres to him and that he subsequently sold 4 acres. That even though he does not stay on the land, his father and thereafter himself have continued to cultivate the same.
 6. On the other hand, it was the 2nd Administrator/Objector's case that after the demise of the deceased, his surviving three brothers including each of their fathers sat and agreed to subdivide the land into three equal portions so that each of the deceased's brother would get 4 acres, but that the 1st Administrator/Petitioner secretly came to court without involving his uncles and began the process of petitioning for grant of letters of administration.
 7. The 2nd Administrator/Objector is a cousin of the 1st Administrator/Petitioner. Their fathers, now deceased, were brothers. The 2nd Administrator/Objector's father filed for revocation of the grant herein vide Summons for Revocation dated 8th of November 2002 drawing the Court's attention to the fact that the deceased herein was his brother and that his consent had not been obtained. The grant herein had been confirmed on 30th of January 2000.
 8. Having therefore considered the scanty evidence adduced by both sides Ali Aroni J (as she was then) held that the 1st Administrator/Petitioner failed to comply with the requirements of the law and that the application for the limited grant was procedurally and substantially lacking thus ought to be annulled. The 1st Administrator/Petitioner was directed to obtain all relevant consents, obtain the chief's letter giving names of all survivors of the estate with the issue of distribution to be tackled during the confirmation of the grant stage.
 9. The matter was fixed for mention before S.N Riechi J to confirm 1st Administrator/Petitioner's compliance with the orders of Ali Aroni J (as she was then) but that the 1st Administrator/Petitioner was yet to comply. The Court set another mention date to confirm compliance on 17th May 2022.
 10. On 17th May 2022, this file was placed before me and I proceeded to set it down for directions on 20th July 2022.
 11. This matter came before me on 20th July 2022 and Counsel for the 1st Administrator/Petitioner, Mr. Osango, brought it to the attention of the Court that the 1st Administrator/Petitioner was yet to comply with the orders of Ali Aroni J (as she then was) as he had not yet secured the relevant consent of the beneficiaries.
 12. Vide Court directions issued on 1st August 2022, I directed as follows:
 - i. that both the 1st and 2nd Administrators be made joint Petitioners in this matter;
 - ii. a fresh Grant be issued in the names of the 2nd and 1st Administrators;
 - iii. upon the of the issuance of the fresh Grant both the 1st and 2nd Administrators be directed to file Summons for Confirmation of Grant within 30 days; and
 - iv. that the matter be mentioned on 27th September 2022 to confirm compliance and for further orders.
 13. The 1st Administrator/Petitioner filed an application dated 27th September 2022. The 2nd Administrator was granted leave to file a response to the said application. He subsequently filed an affidavit of protest dated 18th November, 2022



14. On 30th November 2022, directions were taken to the effect that the summons for confirmation of grant and the protest be canvassed by way of viva voce evidence and that the parties were granted leave to file and exchange witness statements or documents if need be.

Applications

15. The 1st Administrator/Petitioner's herein filed Summons for Confirmation of Grant dated 27th September 2022 for confirmation of grant and urged the Court to confirm the grant of letters of administration since the six months' period had long expired. An affidavit of proposed schedule of distribution was subsequently sworn by the 1st Administrator, Mossy Khaemba Muchanga, where it was deponed that the deceased died about 14 years ago and that during his life time he bequeathed him his property comprising of land parcel No. East Bukusu/East Sangalo/212. According to him, he was entitled to the whole portion.
16. In response to the application, the 2nd Administrator filed an affidavit in protest dated 18th November 2022. He averred that the deceased herein died without a family of his own and that his estate has to be shared amongst the families of his three deceased brothers namely: Wanyonyi Nang'endo, Juma Nang'endo and Samson Muchanga.
17. According to him, the estate of the deceased can only be shared among the surviving children of the three deceased brothers and that it is essential that each of the three families take 4 acres each. He proposed that the remaining acres on East Bukusu/East Sang'alo/212 be distributed equally amongst the two houses of Wanyonyi Nang'endo and Juma Nangendo.
18. He averred that it was a lie that the deceased adopted the 1st Administrator herein and that he bequeathed his land to him and that no evidence was availed to that effect.
19. He suggested that all the three families of the deceased brothers of the deceased Wamalwa Nang'endo ought to share the estate of the deceased comprising of East Bukusu/East Sang'alo/212 measuring 12 acres equally amongst his 9 nephews.
20. He averred that it was on record that the 1st Administrator sold off 4 acres from the said estate and that was equal to the portion meant for the family of Samson Muchanga. He also averred that the 1st Administrator and his brothers cut down the trees that were on the land and sold them off, and that the 1st Administrator also sold all the livestock of the deceased and is yet to account for the same.
21. He further averred that the 1st Administrator and his brothers have been cultivating sugarcane on East Bukusu/East Sang'alo/212 and the harvested cane delivered to Nzoia Sugar Company.
22. He finally averred that the 1st Administrator and his father's house should not benefit from land parcel East Bukusu/East Sang'alo/212 anymore.
23. On 15th May 2023, the 2nd Administrator filed another distribution schedule of East Bukusu/East Sang'alo/212 as follows:



NO	NAME	ID NO.	SHARE
1.	MOSSY KHAEMBA MUCHANGA		1 ACRE
2.	DAVIS WABWIRE MUCHANGA		1 ACRE
3.	PROTUS WANJALA MUCHANGA		1 ACRE
4.	DICKSON MASINDE MUCHANGA		1 ACRE
5.	HUDSON NYONGESA JUMA	9995831	1.4 ACRE
6.	ZATHIEL WANYAMA JUMA	13438843	1.3 ACRE
7.	JOTHAM WEKESA JUMA	2371163	1.3 ACRE
8.	FRANCIS MULUNDU WANYONYI	7988968	2 ACRE
9.	WAFULA SIRENGO WANYONYI	7992431	2 ACRE

24. Both the applications were canvassed by way of viva voce evidence.

Objector's case

25. OB.PW1 was Hudson Nyongesa Juma, who testified that he is the 2nd Administrator in this case and adopted his statement dated 16th January 2023 as his evidence in chief. According to him, the 1st Administrator did not procedurally obtain the initial grant of letters of administration and that this court cannot grant him the estate of the deceased comprised in East Bukusu/East Sang'alo/212 measuring 12 acres. He proposed that the parcel East Bukusu/East Sang'alo/212 ought to be shared equally among the three families of Wamalwa Nang'endo's brothers namely Wanyonyi Nang'endo, Juma Nang'endo and Samson Muchanga to ensure that each family gets 4 acres. It was his testimony that the 1st Administrator used the grant he acquired fraudulently to wantonly dispose off other properties of the estate of the deceased such as the sale of the deceased cattle, the sale of 500 or so blue gum trees and leasing out part of the land East Bukusu/East Sang'alo/212 to Nzoia Sugar Company.



26. On cross-examination, he testified that he was born in 1969 while the deceased died on 17th May 1974 and that the deceased had brothers who are now deceased. He told the Court that he is not aware that that the deceased gifted land parcel East Bukusu/East Sang'alo/212 to the 1st Administrator and that since the demise of the deceased he was not able to attend the "lufu" Bukusu traditional ceremony and could not comment on the deliberations that were made thereof. He told the Court that at the time of the deceased's death, he could not tell exactly the number of cows the deceased had and that he knew the deceased had over 500 trees. He insisted that the estate of the deceased ought to be distributed equally.
27. On re-examination, he told the Court that the families of Juma and Wanyonyi granted him the consent to come on board in these proceedings as he represents their interests.
28. At that juncture the 2nd Administrator/Objector closed his case.

Petitioner's case

29. PET. PW1 was Mossy Khaemba Muchanga who testified that he is the 1st Administrator in this case and adopted his statement dated 27th February 2023 as his evidence in chief. He further relied on his list of documents dated 28th May 2019 which he produced in Court as PET.EXH 1-4. He also produced the list dated 1st March 2023 as PET. EXH 5-11. He told the Court that his father is Samson Muchanga Nang'endo. According to him, the deceased herein adopted him as his own child and bequeathed all his property to him. He stated that at the time of the demise of the deceased he was young and that the clan allowed his father Samson Muchanga Nang'endo to plough the land awaiting his maturity. He testified that he has been utilizing land parcel East Bukusu/East Sang'alo/212 from the year 1993 to date as the clan acknowledged that the land belonging to the deceased was indeed bequeathed to him. He stated that the other three brothers of the deceased and relatives shared the property of the deceased as follows:
 - i. Anna Nasipwoni (deceased's mother) ---8 cattle
 - ii. Juma Nang'endo-----10 cattle
 - iii. Wanyonyi Nang'endo----10 cattle
 - iv. Samson Nang'endo---to be ploughing the land in question until his maturity
30. He testified that since he sold 4 acres of the land to Aldo Wanyama, to date, nobody questioned his occupation of the part of the said land. He insisted that the Chief's letter dated 14th March 2022 bore him witness that he was entitled to the whole of land parcel East Bukusu/East Sang'alo/212 and which the clan leadership acknowledged the same.
31. On cross-examination, he told the Court that he did not agree with the court's decision issued on 28th January 2016 but that he did not lodge an appeal against the same. According to him, he was adopted by the deceased and bequeathed East Bukusu/East Sang'alo/212 to him and has since sold off 4 acres out of the 8 acres and that he has a title to that effect.
32. On re-examination, he told the Court that the judgement of the Court dated 28th January 2016 did not direct that the land be shared equally amongst the brothers of the deceased.
33. PET.PW2 was Luka Senerwa Mapesa who testified that he knows both the Administrators herein and that he used to visit the deceased while he was alive and could swear that he did not have a child but he bequeathed all his parcel of land namely East Bukusu/East Sang'alo/212 to the 1st Administrator. He adopted his statement dated 6th March 2023 as his evidence in chief. According to him, when the



deceased died he attended the “lufu” ceremony for purposes of sorting out the property of the deceased as he had desired prior to his death. The property of the deceased was shared out as follows:

- i. Anna Nasipwoni (deceased’s mother) ----8 cattle
 - ii. Juma Nang’endo----10 cattle
 - iii. Wanyonyi Nang’endo---10 cattle
 - iv. Samson Nang’endo---to be ploughing the land in question until his maturity
34. On cross-examination, he told the Court that he is 80 years old and that he is a cousin to the father of Samson Muchanga. According to him, the deceased made an oath stating that upon his demise his assets were to be given to the 1st Administrator.
35. On re-examination, he told the Court that the clan did not tell him to summon the brothers of the deceased despite it being the norm that if the deceased dies his property ought to be inherited by his next of kin.
36. PET.PW3 was Ignati Wamuchwa Wafula who testified that he wished to adopt his statement dated 6th March 2023 as his evidence in chief. According to him, both the Administrators herein are well known to him and that he used to visit the deceased while he was alive and could swear that he did not have a child but he bequeathed all his land comprised in East Bukusu/East Sang’alo/212 to the 1st Administrator. According to him, when the deceased died he attended the “lufu” ceremony for purposes of sorting out the property of the deceased as he had desired prior to his death. The property of the deceased was shared out as follows:
- v. Anna Nasipwoni (deceased’s mother) ----8 cattle
 - vi. Juma Nang’endo----10 cattle
 - vii. Wanyonyi Nang’endo----10 cattle
 - viii. Samson Nang’endo---to be ploughing the land in question until his maturity
37. On cross-examination, he told the Court that he knows PET.PW2 as the clan member and was a clerk to their clan deliberations. He admitted to being present during the deliberations with regard to the estate of the deceased and that as per the Wanyala Clan traditions, it is the brothers of the deceased who are supposed to share the property. He told the Court that he used to visit the deceased who indicated to him that his land should go to the 1st Administrator.
38. On re-examination, he told the Court that he was present when the deceased made his wishes and that it is only the Administrators who are battling for the property.
39. PET.PW4 was Christantus Wafula Nang’endo who adopted his statement dated 27th February 2023 as his evidence-in-chief. According to him, his father was Wasike Nang’endo and that the deceased herein was his brother. He stated that he used to visit the deceased with the 1st Administrator and he would tell him that he did not have any children and that upon his demise all his property should go to the 1st Administrator. He stated that on 21st May 1974 during the “lufu” ceremony, all the attendees unanimously adopted the wishes of the deceased and maintained that Samson Muchanga was utilizing the land until 1993 when it was handed over to the 1st Administrator. He told the Court that the property of the deceased was shared out as follows:
- ix. Anna Nasipwoni (deceased’s mother) ----8 cattle



- x. Juma Nang'endo----10 cattle
 - xi. Wanyonyi Nang'endo---10 cattle
 - xii. Samson Nang'endo---to be ploughing the land in question until his maturity
40. On cross-examination, he told the Court that he is 63 years old and that he was born in 1960. He insisted that the deceased bequeathed his properties to the 1st Administrator.
41. On re-examination, he told the Court that the deceased pointed out to him on several occasions that his property was to go to the 1st Administrator.
42. At the close of the Petitioner's case, this Court directed the parties to file and exchange their respective written submissions. They duly complied.

Analysis and determination.

43. The application for determination is a summons for confirmation of grant. Grants are confirmed under section 71 of the *Law of Succession Act*, which states as follows:

“Confirmation of Grants

71. Confirmation of grants

- (1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.
- (2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may —
 - (a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or
 - (b) if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 of this Act, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be administered; or
 - (c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or
 - (d) postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:



Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares.”

44. I have considered the averments of the parties, and the mode of distribution of the deceased’s estate that each proposes. I have also considered the submissions. In my view, the only issue for determination is which is the appropriate mode of distribution of the deceased’s estate?
45. This inheritance is by descent. The claims of descent and all existing models and rules are set forth in the [Law of Succession Act](#) covering both real and personal property.
46. The deceased, as evidenced by a certificate of death filed herein, died on 17th May 1974 intestate and that the 1st Administrator started the Petition process in 1998. It follows that under section 2(1) of the [Law of Succession Act](#) the law applicable is the [Law of Succession Act](#). The deceased died intestate after the [Act](#) came into force on 1st July, 1981.
47. From the foregoing evidence of the parties, it is not in dispute that the deceased had left his estate to the 1st Administrator and that his properties were distributed during the “lufu” ceremony. Upon perusal of the documents availed by the 1st Administrator, it is noted that the 1st Administrator availed “lufu” minutes vide his list of documents dated 1st March 2023. The 1st Administrator also called witnesses who had attended the “lufu” ceremony to demonstrate to the Court how the deceased’s property was shared and how they respected his wishes by giving the 1st Administrator the parcel of land East Bukusu/East Sang’alo/212 and distributed the rest of his properties amongst his late brothers and his mother. The 2nd Administrator did not challenge the evidence of the two clan members PET.PW2-PW3. He did not challenge the authenticity of the availed minutes to the “lufu” ceremony thus casting no doubt on the case of the 1st Administrator.
48. It is noted that the Objector’s case hinges on the claim that since the deceased herein had died without a wife and children then his estate should be shared between his siblings and or children of his siblings. Ordinarily, in the absence of a will then that ought to be the position. However, the evidence presented by the objector did not convince this court that the deceased died without giving instructions as to how his property was to be handled. It is instructive that the objector confirmed during cross-examination that he did not attend the Bukusu “lufu” ceremony and thus cannot tell how the property of the deceased was shared out. Despite securing a consent from some beneficiaries, the Objector failed to call any one of them to come and testify so as to fortify his claim that the estate be distributed among the houses of the deceased’s brothers. The objector did not give any valid reason why those witnesses were not called. On the other hand, the 1st Petitioner/Respondent called three witnesses whose testimonies appear credible and believable that the deceased had decreed that his assets be taken over by the 1st petitioner herein. The said witnesses were also present during the “lufu” ceremony wherein the properties were distributed. It came out clearly that the deceased had earlier made it clear that the 1st petitioner whom he had taken in as his son was to take over his assets upon his demise. The objector did not give any reason as to why he did not attend the “lufu” ceremony and voice his objections regarding the distribution of the estate of the deceased yet he was aware that it is during that ceremony when persons staking a claim to the estate of a deceased are required to present their claims for consideration by the clan. It is obvious that the objector herein had been aware of the special relationship the 1st petitioner had with the deceased prior to his demise. The deceased’s wishes were



duly executed during the said ceremony and that the land parcel East Bukusu/East Sangalo/212 was ordered to be held in trust by the 1st petitioner's father and that upon coming of age the 1st petitioner would become the owner thereof. I am satisfied with the evidence of the 1st petitioner and his witnesses and which has vouched for the distribution of the estate as proposed by the 1st petitioner. I find the said proposed mode of distribution to be credible and in tandem with the wishes of the deceased. The Objector and those allied to him will not suffer any prejudice since they already have provisions from their parents. It is clear that the objector has been actuated by malice against the 1st petitioner upon seeing him benefitting alone from the assets of the deceased. The objector and those allied to him should not salivate at the assets of the 1st petitioner since the same had been gifted to him by the deceased. I am in agreement with the 1st Administrator's argument that he was bequeathed parcel No. East Bukusu/East Sang'alo/212. His proposal to distribute the land parcel No. East Bukusu/East Sang'alo/212 to himself is in accordance with the wishes of the deceased herein and validated by the clan during the "lufu" ceremony.

49. In the result, it is my finding that the Objector's protest is devoid of any merit. The same is dismissed. The summons for confirmation of grant dated 27/9/2022 is allowed as prayed. Each party to bear their own costs.

DATED AND DELIVERED AT BUNGOMA THIS 18TH DAY OF DECEMBER, 2023.

D.KEMEI

JUDGE

In the presence of:

Wamalwa R For 1st Administrator/Petitioner

Angima for 2nd Administrator/Objector

Kizito Court Assistant

