



REPUBLIC OF KENYA



In re Estate of the Late John Muhia Maina (Deceased) (Succession Cause 19 of 2018) [2022] KEHC 10089 (KLR) (21 April 2022) (Ruling)

Neutral citation: [2022] KEHC 10089 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 19 OF 2018
TM MATHEKA, J
APRIL 21, 2022**

IN THE MATTER OF THE ESTATE OF THE LATE JOHN MUHIA MAINA (DECEASED)

BETWEEN

JAMES MAINA GACHATHI APPLICANT

AND

LYDIA NYOKABI NDUMIA 1ST RESPONDENT

LUCY WAMBUI NDUMIA 2ND RESPONDENT

RULING

1. This herein relates to the estate of John Muhia Maina who died intestate on 26th March, 2016 aged 59 years old.
2. The respondents Lydiah Nyokabi Ndumia & Lucy Wambui Ndumia petitioned this court for letters of Administration Intestate on 16th April, 2018 and the same were issued to them on 8th April, 2019.
3. According to the Affidavit in support of the petition for letters of administration intestate, supported by a letter from the Chief Viwanda Location Nakuru dated 24th May 2018, the deceased left the following beneficiaries;
 - i. Lydiah Nyokabi Ndumia- Widow-45 years
 - ii. Lucy Wambui Ndumia- Daughter-24 years
 - iii. PM- Son- 15 years
4. The deceased's estate comprised of Nakuru/Municipality Block21/487 with no liabilities and with an estimated value of Kshs.20, 000,000/=.



5. On 18th December 2019, the administrators filed Summons for Confirmation of Grant seeking that the said asset be inherited by Lydiah Nyokabi Ndumia to hold in trust for herself and her two children.
6. Vide Summons dated 30th January, 2020 brought under section 76 of the Law of Succession Act, Rule 44(1) of the Probate and Administration Rules, James Maina Gachathi the Applicant describing himself as the father of the deceased John Muhia Maina seeks for the following orders:-
 - i. That the grant of Letters of Administration to Lydia Nyokabi Ndumia and Lucy Wambui Ndumia and a confirmation of the same Grant made on 23rd of January 2020 be revoked.
 - ii. That the applicant be allowed to be allowed present a joint petition for grant of letters Administration.
7. The Application is premised on the grounds on its face and it is supported by an Affidavit of James Maina Gachathi together with the annexure therewith sworn on even date. The annexure is a letter from the Chief Kaptembwo Location Nakuru dated 16th January 2019.
8. He deponed that the deceased was married to two wives namely; Lydia Nyokabi Ndumia & Joyce Wangui Ngethe and survived by the following dependants: -
 - 1ST House.
 - i. Lydia Nyokabi Ndumia – Widow
 - ii. Lucy Wambui Ndumia- Daughter
 - iii. PM- Son.
 - 2nd House.
 - i. LWM- Daughter-11 years
 - ii. VM- Son-9 years
 - iii. SW- Daughter- 3years
9. He stated that the first respondent Lydia Nyokabi Ndumia divorced with the deceased sometimes in 2005 and she got married to another man and therefore has no right to inherit the deceased's property.
10. That the estate of the deceased shall be wasted if the grant is not revoked and the beneficiaries of the second house will suffer damage if Nakuru Municipality Block 21/487 is inherited by the 1st Respondent.
11. He stated that all through he had been taking care and maintaining the deceased's children i.e. LWM, VM & SW whose mother is deceased as well yet this petition was filed without his knowledge and that of the children of the second house who are omitted from the list of dependants.
12. The application is opposed by the respondents vide their joint Replying Affidavit sworn on 8th November 2021. They deposed that the application is frivolous and a waste of precious judicial time and therefore it should be dismissed with costs.
13. That the applicant does not have the right to bring this application as he is not a beneficiary of the estate of the deceased.
14. That the Applicant has not advanced any evidence to prove that he was the father to the deceased or that he has been maintaining the alleged deceased's children.



15. That the deceased had only one wife Lydia Nyokabi Ndumia and was never married to the said Joyce Wangui Ngethe as there is no Marriage Certificate to prove the same and that similarly there is no proof that Joyce Wangui Ngethe is deceased.
16. That the deceased never had a second wife with children and the annexed letter from the area chief purportedly showing the beneficiaries of the estate is a forgery as it cleverly indicates the alleged second house as the only beneficiaries.
17. That the applicant wants to deny the 1st respondent and her children the right to enjoy the property of her late husband and is desirous of inheriting the property of the deceased for his own interest by using the said minors to get control of the said property. They supported this by annexing an alleged Sale Agreement where the applicant had attempted to sell part of the property to a third party.
18. That the applicant had not annexed birth certificates to prove that the deceased was the father to the said children.

Issues for determination

The issue that arises for determination is whether the application for revocation of grant is merited.

Analysis & Determination

19. Section 76 of the *Law of Succession Act* sets out the grounds upon which a Grant can be revoked; and reads as follows;

“A grant of representation whether or not confirmed may at any time be revoked or annulled if the court decides, either on application by interested party or its own motion:-

- (a) The proceedings to obtain the grant were defective on substance.
 - (b) The grant was obtained fraudulently by the making of false statements or concealment of something material the case.
 - (c) The grant was obtained by means of untrue allegations of fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.
 - (d) The persons to whom the grant was made have failed after due notice and without reasonable cause either;
 - (i) To apply for confirmation within one year of such longer time as the court may allow,
 - (ii) To proceed diligently with the administration of the estate,
 - (iii) To produce to the court such inventory or account of Administration as required under section 83(e) and 83(g) of the act or has produced false accounts.
 - (e) The grant has become useless and inoperative through subsequent circumstances.
20. The applicant’s position is that the deceased had minor children whose mother is also deceased, and whose interests have not been catered for because the respondents did not disclose that fact to the court.



21. The respondents argue, and it is true, the applicant has not provided proof that he is the father to the deceased and therefore the grandfather of the alleged minors. At the same time they accuse him of having attempted to sell the said land for his own benefit. Clearly the applicant is not a stranger to the respondents. The respondents have also not placed evidence before the court to demonstrate that they are the widow and children on the deceased. The same faults they place before the applicants are the same faults that are against them. Both sides would have the burden of proof that they are the legitimate beneficiaries of the deceased's estate.
22. Prima facie, the minors named by the applicant are children in need of care and protection, as orphans. He alleges that they are entitled to his son's estate by virtue of being his son's children. It is not in doubt that if the minors named by the applicant are indeed children of the deceased, they would be entitled to a share of the deceased's estate, whether or not their mother was married to the deceased. While the applicant was obligated to place all the documentary evidence to support his claim, this court is alive to the fact that it would rather err in the best interests of the children than to deny the applicant the chance to present their case. Obviousity this is a matter that ought to have proceeded by way of oral evidence to enable the parties present their respective cases.
23. In the circumstances of this case it would only be fair to allow evidence to be led to establish who is beneficially entitled to this estate, and more specifically whether the minors named by the applicant are indeed beneficially entitled to the estate. This is pursuant to the proviso to Section 71(2) of the *Law of Succession Act*

“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.”
24. And Rule 73 of the P & A Rules which provides for the Saving of inherent powers of court;

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.
25. In the interests of justice, and going by the letter from the Chief, the applicant be and is hereby appointed the guardian of the said children(minors).
26. The grant and any Certificate of Confirmation of Grant issued herein be and is hereby revoked. A fresh grant to issue to the applicant and the 1st respondent.
27. To that end the justice of this matter will only be met if the matter is heard orally.
28. To meet those ends the administrators will each have thirty (30) days to file and serve further documentary evidence in support of their position. The applicant in particular, any documentary evidence to support the claim that the minors are children of the deceased and their mother is deceased too. They can also file and exchange any witness statements for the witnesses they intend to call.
29. Hence the application and the Summons for Confirmation of Grant will be heard together.
30. No orders as to costs.
31. Orders Accordingly

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 21ST DAY OF APRIL, 2022.



MUMBUA T MATHEKA

JUDGE

In the presence of;

CA Edna

Lucy Wambui

James Maina Gacathi

Lydia Nyokabi

Peter Ndumia

