



REPUBLIC OF KENYA



**In re Estate of the Late RMN (Deceased) (Succession Cause 144 of 2017)  
[2022] KEHC 10360 (KLR) (Family) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 10360 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 144 OF 2017  
AO MUCHELULE, J  
MAY 26, 2022**

**BETWEEN**

**YT ..... 1<sup>ST</sup> APPLICANT  
HNN ..... 2<sup>ND</sup> APPLICANT**

**AND**

**SNN ..... 1<sup>ST</sup> RESPONDENT  
JWL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The deceased RMN died intestate on April 13, 2016. She was survived by her mother MWN and her adopted child A.B.M. Her estate comprised the following property:-
  - a. Loitokitok/Ngama/XXX;
  - b. Dagoretti/Riruta/XXXX;
  - c. Plot No. XXX on L.R No. XXXX Syokimau;
  - d. Plot No. XXX on L.R No. XXXX Syokimau;
  - e. Loitokitok/Ngama/XXXX;
  - f. Loitokitok/Ngama/XXXX;
  - g. LTK/Enkariak-Rongena/XXXX;
  - h. Equity Bank A/C No. 0630XXXXXX; and
  - i. Equity Bank A/C No. 0630XXXXX.



2. A grant of letters of administration intestate was on September 11, 2017 issued to MWN. Upon the death of MWN, an application for substitution was made by the deceased's siblings JWL and SNN who became the new administrators and to whom a certificate of confirmation was eventually issued on October 3, 2018 to hold the estate for the child. These siblings are the respondents herein.
3. In the High Court Succession Cause No. XX of 2017 at Kajiado, the applicants YT and HNN petitioned for the grant of letters of administration intestate in respect of the same estate. The 1<sup>st</sup> applicant indicated that he was the widower of the deceased. A.B.M. was indicated as the deceased's child. A grant was issued to them on July 8, 2017, and confirmed on May 21, 2018. They were to hold the estate for the child.
4. The present application dated March 22, 2019 sought the revocation of the grant that was issued herein on September 11, 2019 and confirmed on October 3, 2018 to the respondents. The application was made under section 76 of the Law of Succession Act (Cap. 160) and rules 18(1), 21(1), 26(2) and 44(1) of the Probate and Administration Rules. The grounds were that the same were obtained fraudulently as the respondents had failed to inform the court about the proceedings in HC Succession Cause No. 5 of 2017 at Kajiado; they had failed to inform the court that the deceased had left a widower (the 1<sup>st</sup> applicant) who had married her in 1999 under Kikuyu customary law; and that they had failed to inform the court that the 2<sup>nd</sup> applicant was the child's legal guardian following proceedings in HC Adoption Cause No. XX of 2012 at Nairobi in which the deceased adopted the child. It was the applicants' case that the proceedings leading to the grant were defective in substance because the applicants' consents had not been sought or obtained in the petition.
5. The respondents opposed the application. They denied having knowledge of the Kajiado case. They stated that the 1<sup>st</sup> applicant was a stranger to the estate of the deceased; that he was a Japanese national who was not capable of owning land in Kenya. Their further case was that the 2<sup>nd</sup> applicant was the deceased's niece who lacked capacity to apply for the grant, and that, lastly, they had petitioned for the grant for the sole purpose of benefitting the child. The 1<sup>st</sup> applicant has a work permit.
6. The annexed evidence shows that the deceased had adopted the child in Adoption Case No. XXX of 2012, and that therein the 2<sup>nd</sup> applicant was the child's legal guardian. The appointment was under section 102 of the Children Act. It is also evident that the deceased and the 1<sup>st</sup> applicant were married customarily, and that was acknowledged even during the former's burial ceremony. If the deceased had not appointed the 2<sup>nd</sup> applicant as the child's guardian, under section 103(2) of the Children Act the 1<sup>st</sup> applicant would have become the child's guardian. That being the case, under section 66 (a) and (b) of the Law of Succession Act the applicants were the preferred persons as far as the petition for the grant of letters of administration intestate was concerned. The respondents knew about them and did not seek their consent when petitioning for the grant. They had not renounced their claim to the grant. Under section 51(2)(g) of the Act and rules 7(1)(e) and 26 of the Probate and Administration Rules, the applicants were entitled to notice of the petition and their consents were required. When the respondents did not comply with these requirements of the law, the proceedings leading to the grant were defective in substance. Secondly, the respondents were guilty of material non-disclosure. Either way, under section 76 of the Act the grant issued to them on September 11, 2017 is revoked and the certificate of confirmation issued to them on October 3, 2018 is set aside.
7. It is noted that the Kajiado cause file was brought herein to be heard together with the present cause. The grant and certificate of confirmation issued in Kajiado case shall be the ones in place.
8. Costs shall be borne by the respondents.

**DATED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF MAY, 2022.**



**A.O. MUCHELULE**  
**JUDGE**

