



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Hassan Mapesa Murunga (Deceased) (Succession Cause 908 of 2012) [2022] KEHC 16927 (KLR) (23 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16927 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 908 OF 2012  
WM MUSYOKA, J  
DECEMBER 23, 2022**

**RULING**

1. The deceased herein died on July 7, 2004, according to certificate of death, serial number xxxx. The letter from the chief of Buchifi location, dated January 9, 2012, indicates that he was survived by his only daughter, Kelecancia Atsieno Onyango. Representation to his estate was sought by the said Kelecancia Atsieno Onyango, *vide* a petition that was filed herein on August 23, 2012. She listed herself as the sole survivor of the deceased, who was said to have had died possessed of south Wanga/Buchifi/378 and 379. Representation was made to her on June 27, 2013, and a grant of letters of administration intestate was issued, dated July 8, 2013. I shall hereafter refer to her as the administratrix. The said grant was confirmed on June 30, 2014, *vide* an application dated February 11, 2014, the two assets were devolved wholly upon her, and a certificate of confirmation of grant to that effect was issued to her, dated July 7, 2014.
2. What I am called upon to determine is a summons for revocation of grant, which is undated, but was filed herein on October 9, 2018. It is at the instance of Mohammed Lutta Murunga, who I shall refer hereto after as the applicant. It seeks revocation of the grant made to the administratrix, cancellation of the registration of the administratrix as proprietor of south Wanga/Buchifi/378 and 379 and their reversion to the estate, eviction of the administratrix from the said parcels of land, and the appointment of the applicant as administrator. The grounds on which it is predicated are that representation was obtained on the basis of forged documents, for the administratrix was a stranger to the deceased. In the affidavit in support, it is averred that the deceased had no child, and was survived by his siblings, the applicant and his brothers. He dismisses the administratrix as an impostor, and asserts that the family had anointed him as the person to administer of the estate. The administratrix is accused of obtaining representation without first getting the consent of the immediate family members, and of disposing of estate assets.
3. In her response, *vide* an affidavit that she swore on March 14, 2019, she avers that the applicant is a stepbrother of the deceased. She asserts that she obtained representation through the correct process.
4. Directions were given on November 13, 2019, for disposal of the application by way of oral evidence.



5. The oral hearings commenced on June 16, 2021, with Lutta Mohammed Murunga on the witness stand. He described the deceased as his blood brother, although they were not of the same mother. He also described the applicant as his brother too, and said that he did not know the administratrix. He said that the deceased was not married, and had never told him that he had sired a child. He explained that, according to local culture, a child born outside wedlock must be brought home, through some ceremony, a process that the administratrix did not go through. He also stated that the administratrix did not attend the burial of the deceased. He said that the administratrix never came to live at the home of the deceased. He testified that the deceased had once sold his land, and he salvaged the same by buying it back from the buyer, Pius Akhutu. He said that he was not informed, when the succession cause was initiated.
6. George Mulama Mukanga followed. He described the deceased as his stepfather, and said that he did not know the administratrix. He said that after the deceased died, they had sat as family and agreed that the estate, and in particular Wanga/Buchifi/378, was to be inherited by Luta Murunga. He said that he never saw any children or wife of the deceased. He stated that the administratrix was not a child of the deceased, for if she was, she should have been recognized at his burial, which she did not even attend. He explained that a child born outside wedlock is introduced after both parents die. He disowned a letter that he admitted he wrote, dated December 14, 2011. He said he was pushed to write it by the Chairman, and that the said letter was a lie to the government. He asserted that the truth was what he was telling the court.
7. Pius Nicholas Wesonga testified next. He described the deceased as his grandfather. His testimony was essentially that the deceased sold land to him, but the purchase price money was refunded to him by Lutta.
8. The administratrix testified on September 30, 2021. She stated that she resided at Siaya, Nyandorera. She said that she did not attend the burial of the deceased, as she was not around then. She explained that Muslims do not keep bodies for long, as they dispose of them quickly. She said that she visited the home two weeks after the death, only to find that the body had been disposed of. She said that she had not sold the land. She explained that she was born outside wedlock, to Magdalena Okudili. She said that her first hair was not shaved at the home of the deceased. She said that she visited the home of the deceased as a child.
9. Beatrice Kweyu followed. She was a senior assistant chief for Masingira sub -location. She testified that George Mulama Mukanga was a cousin of the deceased, a village elder. He accompanied the administratrix to the office of the chief, with the letter dated December 14, 2011, introducing her as a daughter of the deceased. She stated that if George Mulama had subsequently disowned the said note, then he had lied. She said that chiefs relied of village elders to get information on family members for the purpose of writing letters to be used in succession proceedings.
10. Abraham Chitechi was next. He described himself as the chair of the Murunga family. He stated that they met as a family to identify the survivors of the deceased, and the administratrix was identified as the survivor. He said that at the meeting they were not able to agree, and referred to a letter dated September 9, 2008, which said as much. The letter recommended that the applicant petition for representation. He stated that he did not go out in search of the administratrix, and that she had come on her own, after the burial of the deceased. He stated that the deceased had 2 farms. He sold both to Pius, but the family disagreed on the same, and the sale was rescinded, and the sale money refunded. He described the administratrix as his cousin, who was married in Siaya.
11. This a fairly complex matter, to be determines purely on the oral evidence adduced by the parties. The issue is on the paternity of the administratrix. The witnesses who testified, on both sides, claimed to



be relatives of the deceased. On one side, they said they did not know her; on the other they said she was their relative, a child of the deceased. State administrators testified on both sides. On one side, a villager elder said the administratrix was a stranger; on the other a senior assistant chief testified that the same village elder had introduced the administratrix to her as a child of the deceased. This is a case of this side says, while the other side says, and I may not do justice to it by deciding it purely on the basis of such evidence.

12. Science has fairly advanced, with respect to determination of paternity. The invention of the deoxyribonucleic acid (DNA) testing was a gamechanger. The deceased is no more, but a kinship DNA testing can be undertaken to sort out this dispute once and for all. I cannot pick out the most immediate blood relatives of the deceased, from the material before me, whose samples can be used to test whether there was any blood relationship or connection between the deceased and the administratrix.
13. The way out should be to have the matter mentioned, so that the parties can give the court the names of the full blood siblings of the deceased. If there are no such siblings, then the court can make do with half-siblings. The date for mention shall be given at the delivery of this ruling. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 23rd DAY OF December 2022**

**WM MUSYOKA**

**JUDGE**

Mr. Erick Zalo, Court Assistant.

Mr. Luchivya, instructed by Marisio Luchivya & Co, Advocates, for the administratrix.

Mr. Juma, instructed by Paul Juma & Company, Advocates, for the applicant.

