REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 3 OF 2019

IN THE MATTER OF THE ESTATE OF PETER ALUSIOLA MULAMULA (DECEASED)

JUDGMENT

1. Peter Alusiola Mulamula, the deceased person to who whom these proceedings relate, died, on 17th March 1978, according the certificate of death on record, serial number 0596037, of 5th April 2018. There is a letter on record, from the Chief of Ilesi Location, dated 18th July 2018, which indicates that the deceased was survived by 32 individuals that are listed therein. Out of the 32, the Chief indicated how only 5 of them related to the deceased. Deborah Waiyeko Mulamula, Mary Mulamula and Jackline Mulamula are said to be daughters-in-law of the deceased; while Alex Mulamula and Christian Mulamula are said to be his grandsons. He was said to have had died possessed of two assets, being Isukha/Mukhonje/563 and 596.

2. Representation to the intestate estate of the deceased was sought by Deborah Waiyeko Mulamula, in her capacity as daughter-in-law of the deceased. She expressed the deceased to have had been survived by seven individuals, said to Deborah Waiyeko Mulamula, Mary Mulamula, Jackline Mulamula, Alex Mulamula, Christine Mulamula, Peter Alusiola and Carolyne Mulamula. The deceased was expressed to have had died possessed of Isukha/Mukhonje/563 and 596. Letters of administration intestate were made to her on 21st March 2019, and a grant was issued to her, dated 27th June 2019. I shall hereafter refer to her as the administratrix.

3. On 23rd August 2019, Wycliffe Alusiola Mulamula, who I shall hereafter refer to as the applicant, lodged an application herein, dated 20th August 2019. The application principally sought revocation of the letters of administration intestate made to the administratrix on 21st March 2019, and his appointment as administrator in her place.

4. The grounds upon which the application is premised are set out on the face of the application, as well as in the facts deposed in the affidavit sworn by the applicant on 20th August 2019. It is averred that the applicant was the only surviving son of the deceased, and, therefore, the only person entitled to petition for representation to the estate. it is asserted that the applicant had priority over the administratrix, who is a daughter-in-law of the deceased. The deceased is said to have had been survived by four sons, one alive and the other three are dead. The applicant is the surviving son, while Hunter Hosea Alusiola Mulamula, Oscar Alusiola Mulamula and Edwin Alusiola Mulamula are dead. The deceased also had a daughter, Cencus Khalenya Mulamula, who is also dead. The administratrix is identified as widow of the late son of the deceased known as Hunter Hosea Alusiola Mulamula. The applicant confirms that the deceased died possessed of Isukha/Mukhonje/563 and 596. He asserts that the administratrix should have petitioned for representation to the estate of her late husband rather than that of the deceased herein. He complains that the administratrix had listed some beneficiaries and left out others, including Maureen Masitsa. She is also accused of listing as beneficiaries, persons who had since died. She further accused of not having listed all the assets of the estate.

5. The administratrix responded to that application by swearing an affidavit on 26th September 2019, and filing it herein on 27th September 2019. She denies giving false information to the court, since she had mentioned all the beneficiaries in the Chief's letter and consent form, but by error the applicant's name was left out in P&A Form 5. She avers that she had consulted the applicant severally, even sending to him fare to facilitate him to file the succession cause, to no avail. She asserts that she had not failed to administer the estate properly to the best interests of all the beneficiaries. She states that the applicant could not be trusted to administer the estate fairly for the benefit of all, since had intermeddled with the estate by cutting down trees and renting out portions of the land to strangers. He is also accused of threatening the wives of his late brothers.

6. The administratrix thereafter instructed an advocate, and filed another affidavit, on 30th January 2020, in reply. In that affidavit she avers that the applicant had not demonstrated how she had concealed information from the court. She states that the applicant was aware of the succession process but he refused to participate, saying that he could not be directed on what to do about his father's estate by daugshetrs-in-law. He disregarded their persistent pleas, saying that he was still mourning his father and he was not to be disturbed. She states that she had included everyone who was a beneficiary of the estate, adding that the Maureen Masitsa referred to by the applicant, was in fact a daughter of the applicant, who could not be listed independently as her share lay with the applicant. She further states that she had included beneficiaries who passed on through their widows and sons, no one had been left out. She further states that she had listed all the assets, and there was no evidence that any was left out.

7. Directions were given on 6th November 2019, for the disposal of the application orally and for filing of witness statements and bundles of documents. The said directions were varied on 19th February 2020, for disposal by way of written submissions.

8. Only the administratrix complied with the directions of 11th February 2020. She filed her written submissions, dated 10th July 2020, on 13th July 2020. In her submissions she argues that the applicant had not proved the allegations made in his application. She submits that she had listed all the survivors of the deceased and the assets of the estate. she argues that she ranked equally with the applicant in obtaining representation to the estate since she had stepped into the shoes of her late husband, a brother of the applicant. She further submits that the deceased died in 1978 and the petition was filed in 2019, and the applicant had enough time to seek representation to the estate of his father. She asserts that she had not failed to administer the estate since she had just been appointed administratrix a month before the revocation application was filed, and the grant had not matured for confirmation. She states that the applicant's problem appears to be that the estate is being administered by a daughter-in-law. She has cited the decision in *Augustine Johnstone Moi Kirigia vs. Catherine Muthoni Isumali Kirimi* [2017] eKLR, to support her submission that the allegations made in the allegations in the application had not been proved.

9. What I have before me for determination, is an application premised on section 76 of the Law of Succession Act, Cap 160, Laws of Kenya. It seeks revocation of grant. Section 76 of the Law of Succession Act provides as follows:

> "*76. Revocation or annulment of grant*
>
> *A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—*
>
> *(a) that the proceedings to obtain the grant were defective in substance;*
>
> *(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;*
>
> *(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;*
>
> *(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—*
>
> *(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or*
>
> *(ii) to proceed diligently with the administration of the estate; or*
>
> *(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or*
>
> *(e) that the grant has become useless and inoperative through subsequent circumstances."*

10. Going by the provisions of section 76 of the Law of Succession Act, grants of representation are liable to revocation on three general grounds. The first is that the process of obtaining the grant was fraught with problems. It could be that there were defects in the process or that the court is misled in some way. Such would include where the grant is sought by a person who is not qualified to obtain representation to the estate of the deceased, or where certain facts as are required under the law have not been disclosed or are concealed from the court or are misrepresented. The second general ground is where the grant is obtained procedurally and properly, but subsequently the grant holder encounters challenges with administration, such as where they fail to apply for confirm of their grant within the period allowed in law or fail to proceed diligently with administration of the estate, or fail to render accounts as and when required. The last general ground is where the grant has subsequently become useless or inoperative, usually in cases where the sole administrator dies.

11. In the instant case, the applicant appears to anchor his case on the first general ground, that the process of obtaining the grant herein was attended by challenges. He raises three issues. One, that the administratrix was not qualified to apply for representation. Two, that some of the survivors of the deceased were not disclosed. Three, some assets were not disclosed.

12. The deceased died intestate in 1978, before the Law of Succession Act came into force on 1st July 1981. Representation to his estate was, therefore, subject to administration in accordance with the law and custom that was in force as at the time of his death in 1978. That is the effect of section 2(1)(2) of the Law of Succession Act. The persons who qualify to apply for administration in intestacy are set out in section 66, which gives an order of priority to guide the court in exercising discretion in the matter of appointment of administrators. The provision states as follows:

> "*66. Preference to be given to certain persons to administer where deceased died intestate*
>
> *When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—*

(a) surviving spouse or spouses, with or without association of other beneficiaries;

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

(c) the Public Trustee; and

(d) creditors: Provided that, where there is partial intestacy, letters of administration in respect."

13. According to that provision, the court ought to be guided by Part V of the Act, which settles the order of priority in entitlement to a share in the estate of the deceased. Priority is given to the surviving spouse, followed by the children of the deceased, followed by parents of the deceased in the event that the deceased was not survived by a spouse or child, other relatives follow thereafter. The same applies with regard to entitlement to administration by dint of section 66. The surviving spouse has priority to administration, followed by the children, parents of the deceased, siblings, other relatives to the sixth degree, the Public Trustee and creditors in that order. When that is applied to the instant case, it would mean that the widow of a dead son of the deceased, the administratrix herein, would not have priority to appointment over a surviving child, the applicant herein.

14. I note that when she lodged her petition herein on 22nd January 2019, she lodged simultaneously with it a copy of a consent, in Form 38, prescribed under rule 26 of the Probate and Administration Rules, purportedly signed by the beneficiaries. Although the applicant is listed in the application as a beneficiary, there is no signature against his name, and therefore he did not consent to the petition by the administratrix.

15. I should consider whether the said consent was necessary in the circumstances. Rule 7 of the Probate and Administration Rules sets out the procedure for applications for representation. Sub-Rule (7) addresses situations where the petitioner has a lesser right to representation, and requires that he or she either causes citations to issue to the persons with prior right to apply, or gets them to renounce probate, or obtain their written consent allowing him or her to apply for representation. The provisions of section 66 of the Act, which I have set out above, should be read together with Rule 7(7) of the Probate and Administration Rules, which states as follows:

> "*7 (7). Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has –*
>
> *(a) renounced his right generally to apply for grant; or*
>
> *(b) consented in writing to the making of the grant to the applicant; or*
>
> *(c) been issued with a citation calling upon him to renounce such right or to apply for a grant. "*

16. The administratrix in the instant cause did not have a superior right to administration over the children and the other relatives of the deceased, going by section 66 of the Act, since she was not even among the persons named in that provision, being a daughter-in-law of the deceased. A reading of section 66 and Rule 7(7), together, would mean a daughter-in-law who applies for representation to the intestate estate of her late father-in-law must comply with requirements of Rule 7(7), since that provision applies only to persons who seek representation while they had a lesser right to administration. She did not have any priority to administration at all, under section 66, and, therefore, she should have obtained the consents of the children and grandchildren of the deceased before she applied for representation to the estate of her late father-in-law.

17. I have made reference to Rule 26 of the Probate and Administration Rules in paragraph 15 of this judgment. The said provision states as follows:

> "*26(1). Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.*
>
> *(2). An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equally* or *priority, be supported by an affidavit of the applicant and such other evidence as the court may require."*

18. Rule 26 reinforces section 66 of the Law of Succession Act and rule 7(7) of the probate and Administration Rules. It focuses mainly on petitioners for representation in intestacy who rank equal or lesser to other survivors of the deceased who have not themselves petitioned. It requires that the petitoenr notifies such persons with equal or prior right of his intention to petition for representation, and where such persons have not renounced their entitlement to apply or signed a consent in Form 38 or 39, the petitoenr is required to file an affidavit with such evidence as may be required. In the instant case, the administratrix had inferior right to administration compared with the applicant, she should have complied with Rule 7(7) of the Probate and Administration Rules. There is nothing on record to show that she complied with the said Rule. The applicant did not renounce his entitlement to apply for representation, nor sign the consent in Form 38 or 39, as contemplated by Rule 26(1), hence Rule 26(2) kicked in, the administratrix should have filed an affidavit, to explain the efforts she had made to notify the applicant of her intention to petition for representation, and to get him to renounce his entitlement to representation and to consent to her petitioning, and the results of those efforts. If it transpired that he was indeed notified and neglected to act, then the court would be entitled to overlook him, and exercise the desertion in section 66, and appoint anybody else. She did not file the affidavit. There is therefore no evidence that the applicant was ever consulted before the administratrix sought representation in this cause, when she had no right at all to apply for the same, let alone a prior or equal or lesser right to that of the applicant or the grandchildren of the deceased.

19. The law that guides applications for appointment as administrators is in section 51 of the Law of Succession Act. Where intestacy occurs, section 51 of the Law of Succession Act, would apply regardless of whether the deceased died before or after 1st July 1981. Section 51 sets out the process for applying for simple administration, The provision states:

> "*51. Application for grant*
>
> *(1) Every application for a grant of representation shall be made in such form as may be prescribed, signed by the applicant and witnessed in the prescribed manner.*
>
> *(2) Every application shall include information as to—*
>
> > *(a) the full names of the deceased;*
> >
> > *(b) the date and place of his death;*
> >
> > *(c) his last known place of residence;*
> >
> > *(d) the relationship (if any) of the applicant to the deceased;*
> >
> > *(e) whether or not the deceased left a valid will;*
> >
> > *(f) the present addresses of any executors appointed by any such valid will;*
> >
> > *(g) in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;*
> >
> > *(h) a full inventory of all the assets and liabilities of the deceased; and*
> >
> > *(i) such other matters as may be prescribed."*

20. Under section 51(2)(g) of the Law of Succession Act, it is clear that the persons to be disclosed in the application for representation are the immediate survivors of the deceased, that is to say surviving spouses, children, parents, siblings and children of any siblings who are dead. The provision is in mandatory terms; these individuals must be disclosed. Intestate succession is about the passing of property from the deceased to his immediate blood relatives, that is persons who are connected to the deceased by bloodline. The exceptions to this would be any surviving spouse of the deceased or an adopted child of the deceased.

21. The evidence that has come out so far is that the deceased was related to administratrix, not as a blood relative, but as a daughter-in-law, for she was neither a daughter or the deceased, nor his spouse, nor his adopted daughter. She is a widow of one of the late sons of the deceased Going by the provisions of section 51(2) (g) of the Law of Succession Act, she was not among the person who ought to have been listed in the petition. The persons who qualified to be placed in that list were her children with her late husband, who were the actual blood relatives of the deceased, and, therefore, the persons in line with respect to inheritance.

22. The applicant is a son of the deceased. He was among the persons who ought to have been listed in the petition, going by section 51(2) (g) of the Law of Succession Act. He was not listed in the petition. Although, his name did appear in the Chief's letter and the purported consent in Form 38, yet he was not identified in both documents as a son or child of the deceased. The administratrix created an impression to the court that the persons disclosed in the petition were the only survivors of the deceased, or, to put it differently, the only members of the family of the deceased still alive. It has now emerged that the deceased had a son. The fact that he was not disclosed, and meant that the court was misled, whether fraudulently or innocently. Therefore, there was no compliance with the mandatory provisions of section 51(2)(g). The above is an indication that there were procedural defects in the manner the grant was obtained to the extent that the appellant did not comply fully with the requirements of section 51(2)(g) of the Law of Succession Act. There was fraud and misrepresentation to the extent that the administratrix only disclosed a section of the survivors of the deceased, and excluded a son of the deceased, who is among those with prior right to administration over her. There was concealment of important matter from the court, to the extent of that non-disclosure or concealment of the applicant. It matters not whether the nondisclosure or concealment was fraudulent or innocent or as a result of a genuine mistake.

23. Section 66 of the Law of Succession Act should be read together with section 51(2)(g), the persons with priority to administration would also be immediate family members as listed in section 51(2)(g), in that order. The persons entitled to administer the estate of the deceased person herein should be members of the family of the deceased, as per the priority list in section 66 of the Law of Succession Act, or as the family itself may choose. It would appear that there was no surviving spouse, and the deceased was survived by one child and several grandchildren. According to section 66, the applicant, being a son, had priority of entitlement to administration over the grandchildren. However, where the fathers or mothers of the grandchildren of the deceased were dead, according to section 51(2)(g), the such grandchild, by fact of the deaths of their parents, stand at the same level with the child of the deceased, and they would have equal entitlement to administration with the child of the deceased. that would mean that the applicant herein would have equal right to administration of the estate of the deceased herein, with the children of his three late brothers.

24. However, the same position does not obtain with respect to the administratrix. Sons-in-law and daughters-in-law are not mentioned in sections 51(2)(g) and 66 of the Law of Succession Act. They are entitled in intestacy to a share in the estate of their father-in-law or mother-in-law, according to Part V of the Law of Succession Act and customary law, because the inheritance envisaged under the Law of Succession Act and Luhya customary law is patrilineal. They have no right or entitlement to inherit from their parents-in-law's estates, neither do they

have a right or entitlement to administer their estates. They do not stand in the same footing with their own children with respect to both right to inherit and entitlement to administration. They can only come to represent or protect the interests of their dead spouses, in which case they must have a grant of representation to vest them with authority to pursue those interests. Otherwise, without such grants of representation they would have no standing to either pursue their dead spouses' inheritance nor to seek to administer the estates of their dead parents-in-law.

25. I have, at paragraphs 13, 16, 21 and 24, here above, stated that the administratrix, as a daughter-in-law of the deceased, was not in the same footing or league with the children and grandchildren of the deceased. I have cited sections 51(2)(g) and 66 of the Law of Succession Act, to support that proposition. Section 39(1)(c) of the Law of Succession Act is also relevant, in terms of positioning or placing or situating the grandchildren of the deceased, whose own parents had since died, within the intestate succession matrix. Section 39(1)(c) puts such grandchildren at the same level or positon or plane or league with the surviving children of the deceased, who are the grandchildren's own aunts and uncles. Section 39 makes no mention at all of daughters-in-law. They have no place whatsoever in that matrix.

26. For avoidance of doubt, section 39(1)(c) of the Law of Succession Act provides as follows:

> "*Where intestate has left no surviving spouse or children*
>
> *(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—*
>
> > *(a) father; or if dead*
> >
> > *(b) mother; or if dead*
> >
> > *(c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none*
> >
> > *(d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none*
> >
> > *(e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.*
>
> *(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund. 40. Where intestate was polygamous."*

27. As stated in paragraph 12 here above, the deceased died in 1978, before the Law of Succession Act came into force on 1st July 1981. According to section 2(2) of the Law of Succession Act, his estate, therefore, falls for distribution in accordance the law and custom that applied to estates such as his prior to 1st July 1981, but the administration of the estate is subject to Part VII of the Law of Succession Act. Before 1st July 1981, estates of dead Africans were distributed in accordance with the customs of the tribes to which they belonged. It would appear that the deceased herein died a Luhya, from the Isukha community. His estate is, therefore, for distribution in accordance with Luhya customs, specifically those of the Isukha subtribe, subject, of course, to Article 2(4) of the Constitution and the repugnancy principle stated in section 3(2) of the Judicature Act, Cap 8, Laws of Kenya.

28. Eugene Cotran, in his *Restatement of African Law: 2 Kenya II Law of Succession,* Sweet & Maxwell, London, 1969, provides a guide on the purport of Luhya customs with respect to distribution of the estate of a Luhya monogamist intestate. He wrote at pages 45 and 46:

> "1. Estate of a married man with one wife, sons and daughters
>
> (a) LAND. The land is shared among the sons so that each son receives a slightly larger share than his immediate junior. The widow is entitled to use or cultivate a portion of the youngest son. Daughters receive no share.
>
> (b) LIVESTOCK. …"

29. With respect to administration of estates of deceased persons under Luhya customary law, Cotran wrote, at page 43:

> "2. Appointment of administrator (omulindi)
>
> There are two ways in which an omulindi may be appointed –
>
> > (i) by will – a person would normally nominate the omulindi in his will if he made one, and this nomination would be confirmed by the elders at the olovego ceremony; or
> >
> > (ii) on intestacy, by the elders at the olevogo ceremony.
>
> Normally the deceased's eldest son is appointed, if h is of age; or, alternatively, the elders may nominate a brother of the deceased …"

30. I cite Cotran to make the point that even under customary law, daughters-in-law do not feature in terms of entitlement to a share in the

estate of their deceased father-in-law, nor with respect to right to administration of his estate. The whole matter of administration and distribution of estates was confined, just like under statute, to the immediate blood relatives of the deceased. Of course, with respect to administration, customary law is now wholly irrelevant, since administration of estates of persons dying before 1st July 1981 is wholly regulated by Law of Succession Act, and specifically by Part VII thereof.

31. Overall, therefore, the administratrix herein was not qualified nor entitled to appointment as administratrix of the estate of her deceased father-in-law, for the reasons given above. She explained that she applied for representation because the applicant had failed to apply, pointing at the forty year waiting period between 1978 when the deceased died and 2019 when she moved to court. I agree, the delay was inordinate, and the applicant, as sole surviving child should have taken steps. However, that is not a justification for her to apply when she was not qualified. If she had complied with Rules 7(7) and 26 of the Probate and Administration Rules, she would not be in the situation that she finds herself to be presently. She should have caused citations, for example to issue, for service upon the applicant, before she mounted her petition in this case. She took gamble that she has, unfortunately, to lose.

32. The administratrix argued that the the applicant had lost the right to be appointed administrator on account of his having intermeddled with the estate. that allegation was made in the replying affidavit, and there was no response to that affidavit. That, however, should not be read to mean that the applicant conceded to the allegation. It is an allegation of the kind that is established through *viva voce* evidence. The administratrix lost the chance to confront the applicant about it the moment she chose to have the application canvassed by way of written submissions. Not much should, therefore, turn on the allegation of intermeddling.

33. The second issue for consideration is as to disclosure of all the survivors. In the petition, the administratrix listed seven individuals as survivors of the deceased, who are described as grandchildren. yet in the letter from the Chief the deceased was said to have had been survived by the 32 individuals listed in that letter. Secondly, the Form 38, filed simultaneously with the petition herein, listed the same 32 individuals, yet out of that list only seven are named in the petition as survivors. One would wonder what the utility of the Form 38 was if the persons named therein are not mentioned in the petition as survivors. There must be a correlation between the persons named in Form 38 and the persons listed in the petition as survivors.

34. The most immediate survivor of the deceased in this case is the applicant, being the sole surviving child of the deceased. It is curious that his name would be left out in the petition as a survivor of the deceased. The administratrix explained the omission as inadvertent as opposed to deliberate. I am not persuaded. I note that even in the Chief's letter, the applicant, though listed is not identified as a child of the deceased, despite he being the only surviving child and the most immediate survivor. Moreover, the deceased had five children, four have since died leaving the applicant as sole surviving child. The administratrix should have grouped the survivors according to the children of the deceased. so that after naming the applicant as survivor of the deceased, the administratrix should have listed each of the four dead children of the deceased and named each of their surviving children thereunder. It is pointless to throw a long list of names before the court without a narrative as to how these names are connected to the deceased. The judge presiding over a succession cause does not live within the community, from which the parties come, and, therefore he or she has no details of the estate, and relies entirely on the parties to place these details on the record in an orderly logical manner. Even where the judge is a member of the community, that information must be disclosed, for it has to go record for posterity. Presenting important information or detail in a jumbled manner aids no one, and only achieves confusion.

35. An issue was raised about Maureen Masitsa not being disclosed. The administratrix averred that she was a daughter of the applicant, while the applicant did not counter that claim. I shall take it that Maureen Masitsa is his daughter. That being the case, there would be no need for her disclosure. The only grandchildren of the deceased meriting disclosure are those whose own parents have died, that would be the children of the four late children of the deceased. Maureen Masitsa's right to a share in the estate is fused with that of her father, the applicant, and since he is alive, and would be taking his share, she should look up to him to get her share from him.

36. The administratrix did not do a good job of making a coherent disclosure of the survivors of the deceased, in her petition, and crucially she did not disclose the most immediate survivor of the deceased.

37. The last issue is about nondisclosure of some of the assets of the estate. the applicant has not clear on this point. He has not given an indication of the assets that have not been disclosed, and, therefore, he has not proved this allegation. Furthermore, the duty of the administrator, once appointed, is to ascertain the estate, with a view to collect, gather or get in the assets. Failure to disclose assets is not always a good ground for revocation of a grant at this stage, where the revocation application is mounted barely a month after the grant was made. It would be another important matter where the administrator is accused of failing to get in assets. Under section 76(c) of the Law of Succession Act, it is one of the matters around maladministration of an estate that can lead to revocation of a grant.

38. Overall, I am persuaded that a case has been made out, by the applicant and from the record before me, for revocation of the grant herein. In the end the orders that I shall make in this matter are as follows:

> **(a) That the application for revocation of grant, dated 20th August 2019, is allowed for the reasons that I have given above, in the terms set out here below;**
>
> **(b) That the grant of letters of administration intestate, made on 21st June 2019, to the administratrix herein, is hereby revoked;**
>
> **(c) That four new administrators shall be appointed to represent the five children of the deceased, and shall include the applicant;**
>
> **(d) That the matter shall be mentioned after thirty days for the families of the four late children of the deceased to nominate the three persons to be appointed jointly as administrators with the applicant;**
>
> **(e) That the persons to represent the families of the late four children of the deceased may be either grandchildren of the**

deceased from those families or the surviving spouses of such late children so long as the said surviving spouses have obtained representation to the estates of their departed spouses;

(f) That any party aggrieved by the orders made in this judgement has twenty-eight (28) days to move the Court of Appeal, appropriately; and

(g) That each party shall bear their own costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 30th DAY OF October 2020

W. MUSYOKA

JUDGE