



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. 470 OF 1990**

*IN THE MATTER OF ESTATE OF GEORGE MUSAU MATHEKA*

*(DECEASED)*

**R U L I N G**

A Grant of Letters of Administration intestate to the estate of the late George Musau Matheka was applied for by Isabella Gichugu Matheka and Rita Mueni Ndinda, widow and daughter respectively. The same was issued to them on 27th October, 1999. The court records show that one Eric Muthui Matheka lodged objection to the petition on 26th July, 1990, and on 13th November, 1990, he filed a “petition by way of cross application for a Grant”.

Eric prayed to be issued with a Grant to the deceased’s estate, jointly with the 2 petitioners.

Eric also filed an answer to the petition for a Grant, stating that he too was a son of the deceased George Musau Matheka who recognized him so. The 2 petitioners petitioned for confirmation of the Grant, and Eric filed an affidavit of protest to confirmation of Grant.

The affidavit in support of the petition for confirmation of grant by the petitioners named the survivors as the 2 petitioners as well as Robert Kala Matheka, a son, David Nzioki Matheka, a son and Stephen Masaai Matheka also a son.

About Eric the affidavit stated the following at para 3 thereof, **“One Eric Muthui Matheka (a major) also claims that he is a son of the deceased which claim is disputed by the applicants ”**.

The same affidavit had the list of assets in paragraph 6 and their estimated values.

The affidavit of protest to confirmation by Eric is dated 7th January, 2000.

Eric disclosed in the affidavit that his natural parents were George Musau Matheka and Anne Kimwele. He complained that the petitioners had left out a number of assets of the deceased, and he gave a list of the items left out. These included a total of 13 real properties whose titles were given, and 4 businesses as well as shares in various companies and motor vehicles and bank accounts.

Attached to Eric’s affidavit were various vital documents as the affidavit shows. One such document was a **“DEED POLL BY PARENT ON CHANGE OF NAME BY INFANT”**.

The Deed Poll was executed by Eric’s mother and on page 2 it reads

***“This is the Deed marked A referred to in the declaration of George Matheka and produced as shown to him on making the said Declaration before me this 13 th day of November, 1979”***

It was signed by a Commissioner of Oath. The Statutory Declaration of Identity was sworn by the deceased.

Also attached was an affidavit sworn by the late George Musau Matheka describing Eric as the “son”. Eric had obtained admission to JABALPUR College in India to pursue a course in Bachelor of Commerce. This was an affidavit of support for Eric by the deceased George Matheka, to the Ministry of Education to confirm that he would pay Eric’s fees and other expenses. Eric also annexed a Christmas card from his father to him. Ann Syokau Kimwele, Eric’s mother had also sworn an affidavit dated 23rd January, 1991 in which she confirmed that Eric is her son whose father was the late George Musau Matheka.

In para 3 of the affidavit she said,

***“I was living at home and we started our association. I hoped he would marry me and we had sexual relations over the period from 1963 till the conception of Eric and I did not have intercourse with anybody else”.***

About expenses for Eric, the mother averred at para 8 of the same affidavit,

***“The deceased always paid the school fees and he did this directly so I do not know how much it was”.***

In court during the hearing of the protest, Counsel for Eric took the court through the affidavits, and also pointed out that Eric was referred to as the deceased’s son, during the funeral and burial of the deceased.

The affidavit in reply to the protest was sworn by Mrs. Isabella Gichugu Matheka, the deceased’s widow, married to him in 1968. Her affidavit was sworn on 2nd February, 1993.

She denied that Eric was the deceased’s son and attached to her affidavit a form from Nairobi School where Eric was a student. The form has Eric’s details but does not mention the name of his father.

The affidavit also gives names of 6 other children whom the deceased used to educate, showing that even Eric was just being educated but was not the deceased’s son.

Isabella averred further in her affidavit that Eric ‘s family made no claim on the deceased during the funeral. She also denied that Eric’s mother was ever married to the deceased.

During the hearing of the protest, Counsel for Isabella repeated the averments in her affidavit and conceded that the deceased witnessed the Deed Poll sworn by Eric’s mother, and filed a statutory declaration.

Annexed to Isabella’s affidavit was that of Nzioka Matheka, a brother of the deceased who averred that between 1965 and 1967 he shared a flat with the deceased and he never saw Eric’s mother Ann Kimwele, ***“stayed there with ”*** the deceased. He denied Eric as the deceased’s son.

From the evidence which I have analysed, the evidence both in the various affidavit and the oral evidence adduced in court by the widow of the deceased and Eric I am satisfied that that evidence is sufficient and from it I make a finding that Eric was son a of the deceased, George Musau Matheka.

The various documents referred to in this cause, for example, the deceased’s affidavit of support for Eric. It is dated 17th June, 1987. He referred to Eric as his “son”. This was not disputed. There was evidence in Isabella’s affidavit that the deceased used to support and educate many children. Even their names were given. That may be so, but there was no evidence on record to show that he claimed those other children as his own. For Eric, he referred to him as his son, and he was swearing to the fact that “he was able and willing to meet all educational expenses of the said Eric Muthini Matheka”.

In the court record are documents to show application and actual purchase of foreign exchange by the deceased to Eric's college in Jabalpur in India.

There is the further evidence by way of statutory Declaration by the deceased dated 13th November, 1979. It speaks for itself, as the deceased confirmed Eric's birth certificate, and also confirmed that it was Eric's mother who executed the Deed Poll changing his names from Eric Muthui to Eric Muthui Matheka. By the Statutory Declaration the deceased now confirmed his name being given to Eric, his son.

A letter written by the deceased on 12th July, 1989 to the Permanent Secretary, Mr. Joshua Terror seeking advise or assistance in paying fees for his daughter Rita, then studying at St. Catherine, and his two sons, one studying in Canada and the other in India. From the evidence on record, I find that the son referred to as studying in India was Eric. I noted that the affidavit of both Isabella and the deceased's brother averred that the deceased was not married to Ann Kimwele, Eric's mother.

I do not find that as evidence to show that the deceased was not Eric's father, as I take Judicial Notice of the fact that a man and woman do not have to be married in order to have a child. Ann Kimwele did not for once claim that she was married to the deceased. She is on record as saying that they had sexual intercourse during the Easter of 1996 and she became pregnant with Eric.

Eric has given a list of several immovable properties and vehicles etc etc which he says belong to the deceased's estate. He has even attached certificates of searches to some properties. How did he know about these properties? Could it have been knowledge he gained as a result of his closeness to the deceased as a son? The totality of the evidence I have considered shows that the deceased was the father of Eric. It is on record that Eric has cross petitioned for the Grant to the deceased's estate. He has prayed that his name be included in the Grant of Letters of Administration to the deceased's estate, that is why he protested to confirmation of the grant which has the names of Isabella and her daughter only.

Since I have found that the deceased was Eric's father, and in order to grant Eric's request I have decided out of my own motion under Section 76 of the Succession Act, Cap 160, Laws of Kenya, to **REVOKE** the Grant of Letters of Administration intestate issued to Isabella Gichugu Matheka jointly with her daughter Rita Mueni Ndinda Matheka on 27th October, 1999. The Order for the Revocation of this grant of letters of administration should be served on the officer in charge of securities, Barclays Bank Ltd, East Nairobi Group of Branches Moi Avenue Business Centre P.O. Box 30116 Nairobi, Kenya.

The order should also be served on any other bank from which the 2 petitioners might have been withdrawing money belonging to the deceased's estate I now direct that a new Grant of Letters of Administration intestate, to the estate of the late George Musau Matheka be issued to Isabella Gichugu Matheka jointly with Rita Mueni Matheka and Eric Muthui Matheka. Once the new grant is issued the three petitioners should straight away petition for confirmation of the same using form 108, the petition, and form 9 the affidavit which accompanies the petition.

Paragraph 5 of form 9 (the affidavit) requires the petitioners to list the deceased's assets, and also show the identities of shares of those beneficially entitled. This will give the petitioners opportunity to give a full list of all assets of the deceased and persons beneficially entitled plus the respective shares of their entitlement.

These are the orders of the court which I expect the petitioners to abide by.

Dated at Nairobi this 27th day of June, 2002.

**JOYCE ALUOCH**

**HIGH COURT JUDGE**