



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of the Late Makutano Donision alias Alex Makutano Donisio (Deceased)  
(Succession Cause 58 of 2014) [2025] KEHC 421 (KLR) (17 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 421 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
SUCCESSION CAUSE 58 OF 2014**

**REA OUGO, J**

**JANUARY 17, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE MAKUTANO  
DONISION ALIAS ALEX MAKUTANO DONISIO ( DECEASED)**

**IN THE MATTER OF**

**PATRICK BARASA MAKUATANO ..... 1<sup>ST</sup> PETITIONER**

**JOSEPH OTWATI MAKUTANO ..... 2<sup>ND</sup> PETITIONER**

**RULING**

1. The deceased Alex Makutano Donisio died on the 8.3.2011. On 11.2.2014 Patrick Barasa Makutano and Joseph Otwati Makutano filed a petition for letters of administration intestate of the estate of Alex Makutano Domisio alia Alex Makutano Donisio. The 2 petitioners are the sons of the deceased. In their affidavit in support of the petition they state that the deceased died intestate and left the following surviving him;
  - i. Patrick Barasa Makutano- son
  - ii. Joseph Otwati Makutano- son
  - iii. Peter Misiko Makutano- son
  - iv. Edward Sitati Makutano-son
  - v. Matayo Saratuki Makutano-son
  - vi. Ben Manialo Makutano – son
  - vii. Tony Makutano-son
  - viii. Makua Makutano-son-minor
2. The deceased had one asset Bungoma/ Kabisi/168 measuring 6.8Ha. He had no liabilities.



3. A grant of letters of administration intestate was issued to Patrick Barasa Makutano and Joseph Otwati Makutano on the 28<sup>th</sup> October 2014.
4. On the 5.10.2015 Grace Nabalayo Makutano filed a Summons for revocation or annulment of the grant. It is brought under Rule 44 of the Probate and Administration Rules. This application is the subject of Ruling.
5. In her application she seeks revocation of the grant of letters of administration made to the petitioners on 26.10.2014 be revoked or annulled on grounds that; the proceedings to obtain the grant were defective and that the grant was obtained fraudulently by making a false statement to the court and concealment of information material to the court. Her application is supported by the affidavit dated the 11.9.2015. She deposes as follows; the deceased was her husband and the only assets he left were land parcel No. Bungoma/Kabisi/ 168 and a full plot in Lunyu Market. The had 5 wives and was survived by the following dependants;

1<sup>st</sup> House

1. Joina Nasimiyu Makutano – widow ( deceased)
2. Peter Misiko- son
3. Patrick Barasa Maukanto-son
4. Joseph Otwati Makutano- son
5. Eunice Nekesa- daughter
6. Richard Nabanngi- son
7. Everlyne Katami- daughter
8. Violet Nafuna- daughter
9. Rose Nanjala – daughter
10. Pamela Khisa

2<sup>nd</sup> House

1. Grace Nafula Makutano- widow
2. Joseph Watwati Makutano- son

3<sup>rd</sup> House

1. Grace Nabalayo Makutano- widow
2. Mathayo Sitraruku Makutano- son
3. Ben Munialo Makutano- son
4. Antony alias Tonny Mukua Makutano – son
5. Dorcus Nafula Makutano- daughter
6. Mitrine Nafula Makutano- daughter

4<sup>th</sup> House

1. Joan Khakasa Makutano- widow



2. Kevin Mukua Makutano- son
  3. Marisiano Makutano- daughter
  4. Ann Makutano- daughter
- 5<sup>th</sup> House
1. Perita Nanjala Makutano- widow
  2. Phanice Wanyenya Makutano- daughter
6. She avers that the above-named beneficiaries were left out and were not involved in the succession proceedings. In 2012 the clan chairman with the consent of the county assistant commissioner and assistant chief of the area divided the piece of land parcel number 168 amongst the beneficiaries. The petitioner failed to include the plot in Lunyu Market in the petition. The petitioner have already sold part of the estate. The petitioners have displayed bad faith and should not be allowed to administer the estate of the deceased.
  7. The petitioner responded to the application to revoke the grant. Patrick Barasa Makutano filed a replying affidavit dated 29.11.2023. His response is as follows; immediately after the burial of his father the objector demolished her house and went back to join her children of the first marriage. When the petition was filed she had changed her interest and was not surviving on the estate. He admits that the deceased had five wives and children as deponed by the objector. The purported sharing done in 2012 was premature as succession had not started. The deceased had no plot in Lunyu market. The Objector's main issue is the share of Ben Munialo Makutano who at the time of his death left behind no wife or children. She wants to receive his share. She is not the right person entitled to benefit from the deceased's estate, nor can she be appointed as an administrator having changed her interest in the estate. She has not protested on the mode of distribution. The 1<sup>st</sup> petitioner failed to attend the objection hearing, thus this affidavit was not subjected to cross-examination.
  8. The objector filed two statements her statement and that of Matayo Sitaruku Makutano. In her written statement dated 13<sup>th</sup> March 2024, she reiterates her affidavit in support of the summons for revocation. She avers further that the deceased had allocated every wife a portion of her land to cultivate and had left a small portion for himself to cultivate. They lived peacefully. After his death, the children of the 1<sup>st</sup> house the 2 petitioners started a dispute alleging that her children were not of the deceased and they chased her away in 2012. In 2013 the land was sub-divided amongst the family members and she was allocated 1/2 an acres.
  9. Sitaruku Matayo Makutano the 1<sup>st</sup> born of the objector listed the beneficiaries who survived the deceased. His affidavit depones similar facts as that of the objector. He depones further that his mother being a widow of the deceased be listed as one of the beneficiaries of his estate. All the shares bequeathed to Ben Munialo ( deceased) be allocated to his mother because the deceased at the time of his demise had no wife nor child of his own.

### **Analysis And Determination**

10. The issue for determination is whether the grant of administration made to the petitioners on 28.10.2014 should be revoked. I have considered the rival affidavits and the law as provided in the [Law of Succession Act](#) Cap160 ( LSA). The application is brought under Rules 44 which guides on the way an application under section 76 of the Act should be dealt with. I will not penalize the applicant for



failing to cite section 76 of the *Law of Succession Act* (LSA). Her prayer is clear from the wording of her application. Section 76 of the LSA provides 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 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) (ii) (iii) 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 to proceed diligently with the administration of the estate; or 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

11. The petition filed by the petitioner filed on 11.2.2014 does not include the names of all the beneficiaries. The petitioner was aware of this but failed to disclose to the court that there were other surviving beneficiaries. This was material non-disclosure and concealment from the court something material to the court. In the case of Ibrahim v Hassan & Charles Kimenyi Macharia, Interested Party [2019] eKLR the court had to revoke a grant due to the exclusion of two beneficiaries from the list of beneficiaries. I note that the other beneficiaries are not part of the application although they are beneficiaries. Only the 3<sup>rd</sup> widow has moved the court seeking to revoke the grant. Patrick Barasa Makutano informed the court on 9.3.2023 that Joseph Otwati Makutano the 2<sup>nd</sup> petitioner died in 2022, however, there was no death certificate produced before this court that he died. I find that there sufficient ground to revoke the grant that was issued on 28.10.2014. I revoke the said grant under section 76 (b) of the LSA. A fresh grant shall be issued in the names of Patrick Barasa Makutano and Grace Nabalayo Makutano as administrators of the deceased’s estate. Having revoked the earlier grant, any of the administrators is at liberty to apply to confirm the grant within 30 days from the date of issue. This being a family matter each party has to bear their costs.

**DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 17<sup>TH</sup> DAY OF JANUARY 2025.**

**R. E.OUGO**

**JUDGE**

In the presence of:

Patrick Barasa Makutano/Petitioner - Present

Miss Natwati h/b for Miss Masengeli -For the Objector



