



REPUBLIC OF KENYA



**In re Estate of Madendekele Kasembeli( Deceased) (Succession Cause  
21 of 2024) [2025] KEHC 4723 (KLR) (10 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4723 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
SUCCESSION CAUSE 21 OF 2024**

**REA OUGO, J**

**APRIL 10, 2025**

**IN THE MATTER OF THE ESTATE OF MADENDEKELE KASEMBELI( DECEASED)**

**BETWEEN**

**TITUS WEKESA POLISI ..... PETITIONER**

**AND**

**SIMIYU POLISI MATENDEKELE ..... OBJECTOR**

**RULING**

1. Simiyu Polisi Matendekele the objector/ applicant, has filed an application dated 30.4.2024 under section 76 of the *Law of Succession Act* Cap 160 seeking to have the grant of letters of administration issued to the administrator Titus Wekesa Polisi on the 17<sup>th</sup> March 1992 and confirmed on the 19<sup>th</sup> September 1992 revoked or annulled on grounds that; the proceedings to obtain the grant were defective in substance, the grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case and that the grant was obtained fraudulently by making of untrue allegations of the fact essential in point of law to justify the grant.
2. In his supporting affidavit, the objector avers that the deceased Matendekele Polisi Kasembeli died on the 8<sup>th</sup> January 1971, and the grant was issued to the respondent/ petitioner. The grant was confirmed on the 9.9.1992, but the estate of the deceased was yet to be fully administered because the land ownership was transmitted to the petitioner. According to the objector, the petitioner failed to disclose that the deceased had other dependents, namely, Simiyu Polisi Matendekele-son, Gladys Nakhanu Polisi- daughter, Florence Nanjala Polisi- daughter, Catherine Nasipwoni Polisi- daughter, Catherine Nasipwoni- daughter, and Namikoye Polisi- daughter. Before the death of the deceased, he was the registered owner of land parcel number East/ Bukusu? North / Sang'alo/1027 ( 24.8HA). The petitioner, being the 2<sup>nd</sup> born, ranks less in priority to the objector, who is the 1<sup>st</sup> son, and he wishes to petition for fresh grants. The petitioner filed the petition in a clandestine way as the other beneficiaries



are not aware of the proceedings. The petitioner concealed from the court something material, hence he seeks revocation of the grant of letters of administration issued to the petitioner.

3. The petitioner filed a replying affidavit dated 16.9.2024. He depones as follows; he petitioned the estate of the deceased in the year 1971, and the grant was confirmed in 1992. Later, he discovered that land parcel number E. Bukusu/ N. Sangalo/ 1027 was subdivided in the year 1969 and created more parcels. In the year 1972, the land register reopened by the chief land registrar was subdivided again in the year 1992. When he confirmed the grant on 9.9.1992, the land was not available. The objector sold his land and bought another land where he is staying to date. He did not obtain the grant fraudulently.
4. The objector filed an answer to the petitioner's replying affidavit. He deposes that in 1971, the petitioner was about 8 years old, and it is not true that he petitioned the estate of the deceased as referred to in the chief registrar's letter dated 15.11.1972 filed in court at Eldoret High Court. It is not true that the asset land parcel no. 1027 was subdivided in the year 1969, and it created more parcels as it was a first registration. It is not true that the land parcel registrar was referred to by the year 1972, as it was reverted to the deceased by the chief registrar's order. It is not true that he sold his share of the parcel number 1027. He was not a party to the grant issued in 1971.
5. Parties testified in court. The objector adopted his affidavits as his evidence and stated further that they have not done succession over the parcel of land. The respondent also adopted his affidavit. He testified that when he did succession, the land was not there in 1992. He does not know who subdivided the land as per the green card. His mother was still alive then. During cross-examination, he told the court that the objector authorised him to do the succession, which was in 1991. Their sisters are married, and their mother was there too. He did not present other people in court as children of Polisi.

### **Analysis And Determination**

6. Parties did not file written submissions; they left it to the court to decide. I have considered the evidence adduced by the parties the orders sought by the applicant, and the law. The only issue for determination is whether this court should revoke the grant issued to the petitioner on 17.3.1992 and confirmed on 19.9.1992.

7. Section 76 of the *law of Succession* 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 subsequent circumstances”.

8. The objector stated that the petitioner did not inform him or his siblings when he filed the petition, and that they did not participate in the matter. The petitioner claims that the objector authorized



him to file the petition together with his late mother. This was not in his affidavit but was stated during cross-examination. This statement was an afterthought. He does not dispute that the objector is his brother and that he has other siblings, his sisters. He claims that his sisters were married and so they were not included. The persons named in the affidavit in support of the petition of letters of administration intestate dated 25.2.1991, Asiwa Namaemba Polisi and Wycliffe Simiyu Polisi are not sons of the deceased. The petitioner included persons who are not beneficiaries of the deceased's estate and failed to name and include the beneficiaries to the deceased's estate, his brother, the objector, and his sisters. He made a false statement when he filed the petition and also concealed information about his siblings, which was necessary and material to this cause. He further claims that he found out that the land had been subdivided in 1969. So why was he seeking a confirmation of the grant? If the land had been transferred, then he ought to have moved to the court to challenge the subdivision before confirming the grant. The objector has demonstrated that it is worth revoking the grant issued to the petitioner. I hereby revoke the grant of letters of administration intestate dated the 17<sup>th</sup> March 1992 and set aside the certificate of confirmation of the grant dated the 9<sup>th</sup> September 1992. Having revoked the grant, I appoint Simiyu Polisi Matendekele and Titus Wekesa Polisi to be the administrators of the estate of Matendekele Kasembeli (Deceased). A fresh grant to issue forthwith. This court lacks the jurisdiction to investigate the subdivisions that were done on the parcel of land No. E/ Bukusu/ N. Sang'alo/1027. The administrators should pursue the matter in the Environment and Land Court. The administrators shall apply to confirm the grant within 60 days from the date of this ruling. No orders as to costs.

**DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 10<sup>TH</sup> DAY OF APRIL 2025.**

**R.E.OUGO**

**JUDGE**

In the presence of:

Simiyu Polisi Matendekele

Titus Polisi

Counsel for the Petitioner- Absent

Wilkister - C/A

