



In re Estate of the Late Philip Chabeda (Deceased) (Succession Cause 105 of 2014) [2025] KEHC 4561 (KLR) (Family) (8 April 2025) (Judgment)

Neutral citation: [2025] KEHC 4561 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 105 OF 2014
HK CHEMITEI, J
APRIL 8, 2025**

BETWEEN

DENNY NALIAVA CHABEDA OBJECTOR

AND

JANE MIDEVA LOMOSI 1ST PETITIONER

ROSE KAREGI 2ND PETITIONER

JUDGMENT

1. The Applicant/Objector who is the son to the deceased filed the objection herein amended and dated 11th January 2017 and asked the court for orders that:-
 - a. The court revokes the letters of administration issued to the Respondents on 7th January 2015 as the same was acquired with concealment from the court of material facts.
 - b. The cause be consolidated with Cause No. 49 of 2014 in Naivasha and the Naivasha cause be the lead file.
 - c. The court do order the 1st Petitioner/Respondent to account for the rent collected in respect to flat number E4 Kibera Highrise since the demise of the deceased on 10th November 2011.
 - d. The court do order the 1st Respondent to account for funds collected from Narok County Government since the deceased demise.
2. When the matter came up for directions the court directed that the same be heard by way of oral evidence. The Applicant/Objector testified and did not call any witness. The Respondent as well testified and did not call any witnesses.



3. While relying on his affidavits on record the Applicant testified that he was the third child of the deceased and that the 1st Respondent cohabited with the deceased but not as husband and wife. His reason was that the deceased did not introduce her as his wife and that there was no ceremony that was conducted whether civil or customary.
4. He said that she was enjoying the properties of the estate having began the succession process without his knowledge. He specifically singled out the NHC highrise flat which according to him the 1st Respondent was renting it out. He demanded that the Respondent accounts for all the rent she has been collecting since the deceased demise.
5. When cross examined, he admitted that in the limited letters of administration filed he sought from the court he included the 1st Respondent as one of the beneficiaries as she was her step mother.
6. He said that he blamed her for the animosity within the family as there have been camps within the family. The 2nd Respondent who is his step sister had moved to the 1st Respondent's camp.
7. He said that by 1999 he was above 18 years and his father did not introduce her as his wife.
8. In the minutes of the burial committee, he admitted that she was recognised as a wife.
9. He admitted also that the chiefs letter dated 9.1.2011 identifies her as the deceased wife.
10. The 1st Respondent admitted in her testimony that the Applicant was his step son and that he was married to the deceased for 18 years having married him in 1992. That by the time of his death he was still living with him.
11. The Objector lived with her while still in school and that the deceased had 8 children but did not marry their mothers.
12. As regards the law firm in Narok and the files she said that the same were taken over by advocate Mungai who was currently acting for the Objector despite the protest from the Law Society of Kenya (LSK). The entire results and payments of the legal fees were taken by the said advocate who has failed to account for it.
13. When cross examined, she said that her marriage with the deceased was customary and that dowry was paid before the deceased was buried as the Luyha customs demands.

Analysis And Determination

14. I have perused the rival submissions on record by the parties as well as the cited authorities. They all generally gravitate around the issues raised in their rival affidavits and I need not reproduce them here.
15. The main issues are whether the 1st Respondent was married to the deceased and a wife for that purpose and secondly and in view of the evidence tendered herein the grant ought to be revoked.
16. The evidence on record in my view which is uncontroverted is that the deceased lived with the Respondent till his demise. There was no evidence to the contrary.
17. The other uncontroverted evidence has to do with the Naivasha succession cause which was consolidated with this file. This file therefore became the lead file.
18. The Objector did not deny the fact the they lived together with the deceased and the 1st Objector in one house while he was still a student and I find ridiculous the argument that his father did not introduce the 1st Respondent as his wife to him. This is absurd and completely out of normal customs and family expectations.



19. His father had absolutely no reason to introduce his wife or girlfriend to his juvenile son. Neither did the Objector any right to demand such.
20. I think the Respondent acquitted herself well when she testified that the Luyha customary rites of dowry before burial were performed and thus, she was recognised as a wife. Although there was no direct evidence the newspaper advertisement on record and the eulogy indicated that she was the deceased wife. I reckon that the same was consented to by the family or clan after the above rites.
21. The Objector did not adduce any evidence to the contrary and in the premises and based on the facts on record and for all intent and purposes the 1st Objector was the deceased wife.
22. In any case there was no evidence to the contrary that the deceased and the Respondent did not stay together as husband and wife for 18 years.
23. On the issue of the National Housing house, I do not find any issue that is contrary. The property forms part of the estate. The same ought eventually to be distributed.
24. As regards the rent collected the explanation that the same was used to rent a bigger house by the Objector was sufficient. Having found that she was the deceased wife, it becomes onerous to demand that she accounts for all the rent collected without any evidence of misuse advanced by the Objector.
25. The same goes to the legal fees that was collected from the Narok county government. The Law society of Kenya in which the deceased was a member has protocols to be observed when a member dies. If indeed counsel Mungai who represented the Objector herein had issues regarding the management of the office as suggested by the 1st Objector then the Law society will be expected to inquire and ensure that the deceased estate is secured on behalf of his clients as well as the beneficiaries.
26. In other words, any fees accruing therefrom to the deceased must benefit the estate just like any other assets left behind by the deceased. Nonetheless this is a matter which squarely falls under the ambit of LSK.
27. The Naivasha file was later brought and consolidated with this file. The issues raised therein were similar, namely the issue relating to the estate of the deceased. The ruling of Meoli J on 21st November 2016 settled it when it revoked the grant dated 4th November 2015.
28. The next question or issue before me is whether I should revoke the grant in line with Section 76 of the Act, Cap 160. The same states:-

“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.”
29. Revocation is not a small matter which will be invoked lightly or capriciously. It is not a matter which will simply be taken whimsically. There must be cogent reasons to show that the same was obtained with illegally and maliciously with concealment of material facts and specifically leaving out the complainant and or failing to consider his interest in the estate.
30. I respectfully do not find any merit in the objection proceedings herein. There is no evidence to suggest that the 1st Respondent was a stranger in the estate. The eulogy as well as the newspaper advertisement by the family clearly demonstrated her to be the deceased wife.
31. The Objector admitted that they stayed together under one roof while his father was still alive. As early as 5th November 2014 when he sought for limited grant in the Naivasha cause he indicated the 1st Objector as a party in the estate.
32. The rest of his siblings did not raise any issue with the Respondent being their step mother. The Objector was in no way left out.
33. I have also perused the mode of distribution which was consented to by the parties and I find the same satisfactory in the sense that the same shares out the estate equally between all of them. It further recognizes the 1st Objector to have a life interest and thereafter it reverts to the deceased children. That is within the provisions of Section 37 of the Act which states.
- “A surviving spouse entitled to a life interest under the provisions of section 35 or 36, with the consent of all co-trustees and all children of full age, or with the consent of the court, may, during the period of the life interest, sell any of the property subject to that interest if it is necessary for his own maintenance:
- Provided that, in the case of immovable property, the exercise of that power shall always be subject to the consent of the court.”
34. The court therefore does not see any reason to interfere with the entire proceedings as they appear. The chief’s letter which the Objector has made great mention in my view are simply letters. The chief is not a family member and invariably will write what the family or the person requesting for the letter desires. He was acting in his official capacity and not part of the family.
35. As a matter of fact, the chief is supposed to be a neutral arbiter and in circumstances where he issues more than one letter it becomes extremely suspicious. It must be noted that the requirement of a letter from the chief or provincial administration for that matter is purely an administrative procedure and not part of the evidence to suggest who is and who is not a beneficiary to the estate which is a preserve of the courts.
36. For the reasons stated above I do not agree with the Objector that the grant was obtained fraudulently. In other words, there is no merit in the objection proceedings as there was no law breached by the administrators or at all. His rights were well covered in the entire proceedings.
37. The objection proceedings are hereby dismissed with no order on costs.



DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 8TH DAY OF APRIL,
2025.

H K CHEMITEI

JUDGE

