



**In re Estate of Paul Natundura Makarios (Deceased) (Succession Cause E067 of 2022) [2025] KEHC 6007 (KLR) (Family) (14 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6007 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E067 OF 2022  
HK CHEMITEI, J  
MAY 14, 2025  
IN THE MATTER OF THE ESTATE OF PAUL NATUNDURA MAKARIOS (DECEASED)**

**BETWEEN**

**ASHLEY MARIACHANA MAKARIOS ..... 1<sup>ST</sup> OBJECTOR  
JUDITH SARANGE MAKARIOS ..... 2<sup>ND</sup> OBJECTOR  
VERONICAH MONGINA MOUTI ..... 3<sup>RD</sup> OBJECTOR**

**AND**

**PRISCILLA NYANGWESO ARAKA ..... PETITIONER**

**RULING**

1. This ruling relates to the application dated 4<sup>th</sup> May, 2023 filed by the Applicants, Ashely Mariachana Makarios, Judith Sarange Makarios and Veronica Mongina Mouti, seeking for orders that:-
  - a. The grant of letters of administration made to Priscilla Nyangweso Araka on 12<sup>th</sup> April, 2022 and all other orders be and are hereby revoked/annulled.
  - b. The Petitioner, her agents, servants and/or assigns be restrained from evicting tenants or interfering with the estate of the deceased in any manner whatsoever pending hearing and determination of this application.
  - c. The said Objectors/Applicants herein be above be allowed on revocation/annulment to rectify and the following be included as beneficiaries of the estate of the deceased:-
  - d. Ashley Mariachana Makarios (Daughter).
  - e. Judith Sarange Makarios (Daughter).



- f. Veronicah Mongina Mouti (Wife).
  - g. Dylan Obaga (Son).
5. Celine Matundura (Daughter).
- d. The Objectors be allowed to be Administrators together with the Petitioner of the Estate of the deceased.
  - e. The said Objectors/Applicants hereinabove be allowed on revocation/annulment to rectify the deceased's left out properties/assets namely:-
    - 1. Houses in USA.
    - 2. Money in bank account in USA.

Which properties were left out intentionally by the Petitioner.
  - f. The costs of this application be provided for.
2. The application is based on the grounds on its face and supported by affidavit sworn by Ashely Mariachana Makarios on 4<sup>th</sup> May, 2023.
3. She avers inter alia that they are the children of the deceased, whose wife was Veronicah, their mother. The deceased died intestate. The Petitioner secretly filed Succession Cause No. E067 of 2022 and fraudulently obtained the grant, which should be revoked.
4. She deponed that the Petitioner had previously participated in family meetings with them and the deceased, making her claims of ignorance untrue. The children, who are still in school, rely entirely on the deceased's estate for support. However, the Petitioner has taken full control of the estate without considering their needs, leaving them sometimes unable to pay school fees and related expenses. After acquiring the letters of administration deceitfully, the Petitioner threatened tenants with eviction and appropriated all estate assets for herself.
5. The application is opposed vide replying affidavit sworn by Priscilla Nyangweso Araka on 15<sup>th</sup> March, 2024.
6. She avers inter alia that she is the deceased's widow having conducted a civil monogamous marriage on 3<sup>rd</sup> May, 1996. The summons for revocation of grant according to her have been filed by strangers who lack locus.
7. She deponed that they lived as husband and wife at Kisii and Nairobi whilst developing their properties and raising their children. They later moved and settled in the United States of America in 1997 until the deceased's demise. The Objectors are not beneficiaries to the deceased's estate and they never supported him during his lifetime. No proof of paternity of DNA tests have been availed to prove that the Objectors are the deceased's children.
8. That Veronicah was their house help and subsequently home maker after her mother died. Her mother was taking care of their home prior to her demise. They needed someone to take care of the house in their absence and that is how Veronicah came into their home. Prior to his death, the deceased was domiciled in the USA and for the said reasons, the family took some time to travel to Kenya to institute the succession process.
9. She accused her of taking advantage of their unavailability to break into their safe and stole all their valuable including title deeds to their matrimonial properties. She reported the loss of the title deed



- to the matrimonial property at Kilimani Police Station. Veronicah has since the deceased's death, intermeddled and attempted to appropriate his estate by posing as the deceased's wife and leasing the properties to unsuspecting tenants.
10. In attempts to fraudulently obtain this estate first approached this honourable court with Paul Tarime on 15<sup>th</sup> November, 2013 through Succession Cause No. 616 of 2013 seeking to petition for letters of administration. Upon becoming aware of the Objector's scheme, she filed a notice of objection whereupon Veronicah abandoned the said petition and secretly filed a similar petition before the high court at Kisii. The Objectors, suspecting that their actions will be discovered rushed to Kisii High Court 3 days later and on 19<sup>th</sup> November, 2013 Veronicah and Judith filed Succession Cause No. 619 of 2013: In the Estate of Paul Matundura Makarios.
  11. The Objectors, despite being strangers, have abrogated themselves the ownership and possession of all the deceased's properties and has initiated several attempts to transfer and alienate the suit property. Vide a ruling dated 27<sup>th</sup> November, 2015 the High Court at Kisii revoked the grant issued to Veronicah and struck out the entire petition while noting that the same was fraudulently obtained and was an abuse of the court process.
  12. In both petitions, Veronicah fraudulently indicated her name as the beneficiary and neither did she obtain their consent to petition the court for grant of letters of administration intestate. Upon successfully revoking the fraudulent grant issued to Veronicah, the Respondent proceeded and filed the current petition for grant of letters of administration and the same was confirmed on 27<sup>th</sup> June, 2022.
  13. She went on to aver that in 2013, she became aware that Veronicah had illegally trespassed on all the properties registered in the deceased's name and without any colour of right went ahead to rent out the same to third parties fashioning herself as the landlady. As such the rightful beneficiaries are unable to take possession and use their bequest occasioned by the Objectors continued use and possession of the suit property. In the administration of the estate, he issued a notice to vacate in line with Section 152F of the Land Act which has not been complied with. The notice precipitated a suit which is suited at Milimani ELC E168 of 2022: Priscillah Nyangweso Araka versus Veronica Mongina Mouti & Others.
  14. The Objectors realizing the imminent danger of eviction rushed to this honourable court seeking that the grant be revoked and in the interim a stay order on evictions be issued. They have never had a meeting with Veronicah or at any point discussed the distribution of the deceased's estate. She has diligently administered the deceased's estate and that in the process of obtaining the grant she disclosed all the material facts and thereafter legally and procedurally obtained the grant.
  15. The Applicants have filed written submissions dated 4<sup>th</sup> December, 2023 placing reliance on the following:-
    - a. In re Estate of the Late Epharus Nyambura Nduati (Deceased) [2021] eKLR where the court revoked a grant, on grounds of obtaining it through the making of false statement and the concealment from the court of something material to the case.
    - b. Samwel Ariga Bosire v Abagusii Otenyo Self Help Group [2021] eKLR where the court held that fraudsters cannot benefit from their acts of fraud.
  16. The Respondent has filed written submissions dated 16<sup>th</sup> September, 2024 placing reliance on the following:-



- a. In *re Estate of Amos Kiteria Madeda (Deceased)* [2021] eKLR where the court observed as follows:

“Other than the death certificate, the 2<sup>nd</sup> applicant provided nothing to show that she is the legal representative of her deceased husband. In absence of a grant of letters of administration properly issued to her by a court of competent jurisdiction, the 2<sup>nd</sup> applicant, lacks capacity to lay a claim to the estate of her deceased husband. Her claim is weakened by her own evidence. She said she went back to her parents. She said no dowry was paid to her family, casting doubts as to whether a valid marriage existed between her and her deceased husband. She never said under what system of law she was married, whether customary, or statutory or cohabitation. It was her evidence that she went back to her parents and she only saw the deceased after he had lost sight. More ought to have been said to demonstrate that she was lawfully married as alleged. This is because she is claiming in her capacity as a widow of her “deceased husband” so it was paramount for her to tender cogent evidence to demonstrate the existence of a valid marriage.”

- b. *Zipporah Gakii Karoki v Robert Edward Gitahi* [2019] eKLR where the court noted as follows:

“Having the name Kamau on his identity card is not sufficient proof that the objector has a father who has/ had parental responsibility over him. The burden of proof is on he who alleges and one would expect that the Petitioners would have pursued this particular aspect of the case more thoroughly as it would have proved that he was not entitled to the estate.”

- c. *PKM v SPM & Another* [2015] eKLR where the court stated as follows:-

“If the applicant denies paternity what other quicker way to resolve the dispute exists than to undergo a DNA test.”

- d. In *re Estate of Philis Wairuri Maina (Deceased)* [2021] eKLR where the court held as follows:

“I agree with counsel for the Respondent that DNA testing is the only final proof of paternity and the applicant has failed to pursue same herein but I hasten to add that the matter cannot be left there. In the best interest of the parties in the matter, the DNA test ought to be done. Thus, before making final orders herein, the court orders that the applicant and the remains of Benson Nderitu Maina shall undergo DNA test to confirm applicant’s paternity.”

- e. *Matheka & Another v Matheka* [2005] 2KLR 455 where the court observed as follows:

“Even when revocation is by court upon its own motion, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by the making of a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegation of facts essential in point of law of that the person named in the grant has failed to apply for confirmation or to proceed diligently with the administration of the estate.”



### **Analysis And Determination**

17. I have carefully considered the application before this court, the responses thereto and the rival submissions filed by the parties.
18. Looking at the history of this cause and based on the rival affidavits I find that this is a matter which ought to be determined by way of oral evidence. The issues raised in particular the relationship between the Applicants and the deceased cannot be dealt with by way of affidavits and submissions only.
19. This is informed by the fact that the applicant, Veronica must prove that she was the deceased wife taking into consideration that the marriage between the deceased and the Respondent was monogamous.
20. Secondly whether the children she claimed she had with the deceased indeed were his or not. These and much more must be established by way of viva voce evidence.
21. As a matter of fact, the parties may consider subjecting the 1<sup>st</sup> and 2<sup>nd</sup> Applicants to a DNA test if need be.
22. Consequently, the court direct as follows:-
  - (a) The objection herein shall be heard by way of oral evidence where the Objectors shall be the plaintiffs and the Respondent the defendant.
  - (b) The parties are each granted 30 days to file and serve each other with witness statements and further affidavits if need be.
  - (c) There be stay of transfer or transmission of any properties as particularized in the certificate of confirmation of grant dated 27<sup>th</sup> June 2022 pending the hearing and determination of this cause.
  - (d) Costs shall await the outcome of the cause.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 14<sup>TH</sup> DAY OF MAY 2025.**

**H K CHEMITEI**

**JUDGE**

