



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Manase Aura Omunani (Deceased) (Succession Cause
523 of 2010) [2025] KEHC 8218 (KLR) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8218 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 523 OF 2010**

**AC BETT, J
JUNE 11, 2025**

BETWEEN

JANEPHER KHAMETE WIDAYA PETITIONER

AND

SEBENCE ABUHELWA MATE OBJECTOR

RULING

1. On 22nd November 2023, by consent of the parties, the application dated 3rd November 2022 was allowed and the Grant issued to the Petitioners revoked. A fresh Grant was issued to the Petitioner and the Objector jointly. It was further agreed that Ms. Andia would file a joint Summons for Confirmation of Grant within thirty (30) days.
2. On 25th January 2024, Ms. Andia filed Summons for Confirmation of Grant which was expressed to be grounded on the annexed Affidavit of the Petitioner and Ruth Aytso Manasi. However, the Affidavit in Support of the Summons for Confirmation of Grant was sworn by the Objector, Sebence Abuhelwa Mate said to be a widow to the deceased. From the Affidavit, it is apparent that the deceased was polygamous and the other wife Ruth Aytso Manasi, is deceased. The deceased wife was also survived by seven (7) daughters one of whom is the Petitioner.
3. The Objector/Applicant proposed that the sole asset of the estate which is L.R No. Butso/ Shikoti/3226 devolve to the Objector/Applicant and Margaret Ayako jointly. The consent for distribution form was only signed by the Objector, Margaret Ayako and Dabithai Anyona Mukhwana. The other five (5) dependants of the deceased did not sign the said consent.
4. In an Affidavit of protest sworn on 4th March 2024, the Petitioner objected to the Objector's proposed mode of distribution. She deponed that her mother Ruth Manasi was the first wife of the deceased and had five children. One of the five children is Margret Ayako.



5. According to the Petitioner, the Objector who is her mother was the deceased's second wife and had two (2) daughters. The Petitioner proposed that the estate of the deceased be first shared out equally between the two houses of the deceased whereby the children of each of the two houses would share their respective portion equally.
6. In her submissions the Petitioner/Protestor reiterated that each of the houses of the deceased get an equal share of 0.47 hectares each from the deceased's property and then each house should cause their respective share to be registered in the joint names of the beneficiaries of their house.
7. I have carefully considered the application. I have also perused the proceedings and the pleadings filed in the cause.
8. It is clear that on 1st April 2011 the Petitioner and her step-mother Ruth Ayitso Manasi were issued with Grant of Letters of Administration intestate. The said Grant was confirmed on 29th October 2013 and a Certificate of Confirmation of Grant issued on 5th November 2013.
9. In support, of the Summons for Confirmation of Grant, the co- Ruth Ayitso Manasi (now deceased), had annexed a consent on distribution form, referred to as P&A Form 37 which was only signed by herself, Petitioner herein, and Margaret Ayako. The three beneficiaries consented to the property of the deceased being distributed solely in equal portions to the two Petitioners.
10. During the hearing of the Summons for Confirmation of Grant on 29th October 2023, Ruth Manasi, Dabithai Anyona and Janepher Khamete were the only beneficiaries who were present for the hearing. The other three attendees were strangers to the estate of the deceased. The court allowed the application and a Certificate of Confirmation of Grant was issued.
11. In November 2023, the Objector/Applicant challenged the Grant and sought the revocation of the same on the grounds that she never participated in the proceedings that culminated in the impugned Grant being issued and confirmed.
12. My analysis of the proceedings leads me to the conclusion that before and after the death of the deceased's first wife Ruth, none of her children have ever participated in the succession proceedings save for Dabithai Anyona Mukhwana.
13. Being cognizant of Section 40 of Law Succession Act, I find that it would be remiss of the court to make an order in regard to the distribution of the estate of the deceased without first hearing all the dependants of the deceased who by law are equally entitled to share in the estate of the deceased who was polygamous and whose first wife had more children than the second wife.
14. In view of the foregoing, I hereby defer the Summons for Confirmation of Grant at this stage. I hereby direct that the Summons for Confirmation of Grant be served upon the surviving children of the deceased's first house. The said children shall have fourteen (14) days upon such service to file their response. The matter shall be mentioned on 8/10/2025 for further directions.
15. Those are the orders of the court.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 11TH DAY OF JUNE 2025.

A. C. BETT

JUDGE

In the presence of:

No appearance for the Petitioner



No appearance for the Objector

Objector present in person

Court Assistant: Polycap

