



REPUBLIC OF KENYA



**In re Estate of Jason Wamocho Mabiale (Deceased) (Succession Cause
139 of 2011) [2024] KEHC 2686 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2686 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 139 OF 2011**

REA OUGO, J

MARCH 6, 2024

IN THE MATTER OF THE ESTATE OF JASON WAMOCHO MABIALE (DECEASED)

BETWEEN

FRANCIS HARON WAMOCHO PETITIONER

AND

JOB NABIALE NAIKOBO OBJECTOR

AND

KEVIN WAMALWA WEKESA INTERESTED PARTY

RULING

1. This cause relates to the estate of Jason Wamocho Mabiale (the deceased) who died on 28th December 1989. The deceased was the owner of Land Title No. Bokoli/Chwele/816. His son Francis Haron Wamocho (Francis) petitioned for the grant of letters of administration. In his affidavit in support of the petition, he listed the following as the deceased's beneficiaries:
 - a. Mary Nakhumicha Wamocho – Widow
 - b. Jonathan Mukui Wamocho – Grandson
 - c. Seth Wanjala Wamocho – Grandson
 - d. Naikopo Wamocho – Son
 - e. Francis Haron Wamocho – Son
 - f. Bonventry Wekesa Lukoa – Son
 - g. Ronald Wekesa Wamocho – Son



- h. Herman Kon'ani Shivachi – Son
 - i. Gabriel Wekesa Wamocho – Son
2. On 29th November 2011, Francis was appointed as the administrator of the deceased's estate. He then filed Summons for Confirmation of Grant dated 6th February 2013. The application was filed together with a supporting affidavit listing the following as the deceased's beneficiaries:
 3. He proposed that the estate be distributed to the following beneficiaries:
 1. Francis Haron Wamocho
 2. Bonventry Wekesa Lukoa
 3. Ronald Wekesa Wamocho
 4. KWW – minor
 5. MW – minor
 6. PMW – Minor
 7. Godfrey Sakwa Naikopo
 8. EWW – Minor
 9. SWW – Minor
 10. Janet Wafula Wasike
 11. Rachel Nasambu Wamocho
 12. Daniel Wanjala Naikopo
 13. Chenjeni Coffee Factory Society Limited
 14. Jonathan Mukui
 15. Naikopo Mukui Simiyu
 16. Herman Kong'ani Shibachi
 4. Francis proposed the following mode of distribution:
 1. Francis Haron Wamocho – 3.1 Ha
 2. Bonventry Wekesa Lukoa – 1.83 Ha
 3. Ronald Wekesa Wamocho – 0.93 Ha
 4. KWW – minor
 5. MW – minor – 0.23 Ha
 6. PMW – Minor – 0.38 Ha
 7. Godfrey Sakwa Naikopo – 0.38 Ha
 8. EWW – Minor – 0.36 Ha
 9. SWW – Minor – 2.0 Ha



10. Janet Wafula Wasike – 0.40 Ha
 11. Rachel Nasambu Wamocho – 0.10 Ha
 12. Daniel Wanjala Naikopo – 0.10 Ha
 13. Chenjeni Coffee Factory Society Limited – 1.00 Ha
 14. Jonathan Mukui – 1.00 Ha
 15. Naikopo Mukui Simiyu – 0.26 Ha
 16. Herman Kong’ani Shibachi – 0.10 Ha
5. The application was met with an affidavit of protest from Job Mabilia Naikobo (Job) and Kevin Wamalwa Wekesa (Kevin). Job is the son of Naikopo Mukui Simiyu, while Kevin is the son of Gabriel Wekesa Wamocho. They allege that the deceased had the following children:
- i. Gabriel Wekesa Wamocho
 - ii. Naikopo Mukui Simiyu
 - iii. Francis Haro Wamocho
 - iv. Regina Nasike Wamocho
 - v. Naliaka Wamocho
 - vi. Priscilla Nelima Wamocho
 - vii. Esther Wamocho
 - viii. Agnes Wamocho
 - ix. Rachael Wamocho
6. The deceased before his death subdivided the land to Gabriel Wekesa Wamocho, Naikopo Mukui Simiyu, Francis Haron Wamocho, Chenjeni Coffee Factory (purchaser) and Patrick Wanyonyi Wekesa (grandson). According to Job and Kevin Naikopo Mukui Simiyu and Gabriel Wekesa were apportioned 12 acres each. They also stated that none of the deceased’s daughters have requested to be given portions of the land.
7. The petitioner filed a further affidavit dated 25/10/2023. He averred that the following beneficiaries have since passed on: Gabriel Wekesa, Legina Wekesa, Lea Naliaka, Nakobo Mukui Simiyu, Priscila Nafula and Maximilla Nabisino. He averred that during mediation, it was agreed that the beneficiaries who have since passed on be substituted by their heirs. He further proposed the following mode of distribution:
1. William Wafula Wekesa 3 acres
 2. Bonfendry Wekesa Lukoa 2 acres
 3. David Mulongo Murefu 2 acres
 4. Job Mabilia Waikobo 3 acres
 5. Eliud Okumu Wafula 2 acres
 6. Esther Nangila Wekhomba 2 acres



7. Daniel Wanjala Naikobi 2 acres
 8. Francis Haron Wamocho 3 acres
 9. Agnes Nasimiyu Wanyonyi 2 acres
 10. Rachael Nasambu Wamocho 2 acres
 11. Chenjeni F.C Society Limited 2 ½ acres
8. The matter was set down for hearing. Job Mabiale Naikobo (Pw1) relied on his affidavit dated 29.6.2016 and his statement filed on 30.8.2017 as his evidence. He testified that his father is Naikobo Mukui Wamocho and that he died in 2010. Thereafter his uncle, Francis, started harassing him over the land, and the matter was escalated to the chief who advised that he should stay in the land which his father allocated him. In 2013 his house was destroyed by the rains and when he returned Francis told him he could not build on the land. He was later attacked by Francis and proceeded to register a restriction. He testified that the deceased had given his father his share which was 12 ½ acres but his uncle, Francis, had only given him 3 acres. On cross-examination, he testified that the deceased only had 3 sons and daughters. He subdivided the land to Patrick, Pw1's mother, Gabriel Wekesa (10 acres) and Francis (11 acres).
 9. Priscillah Naliaka Wekesa (Pw2) adopted her statement dated 22.8.2018. She testified that she was married to Gabriel Wekesa as his 3rd wife. She testified that Gabriel Wekesa had 4 wives. The wives died but there is still one that lives in the Boma. She testified that the deceased sold 2 acres which her husband bought back. She had 6 children with the deceased and 3 of them are alive. She explained that she left her matrimonial home in 1973 due to family wrangles. Her father gave her land in 1974 to put up a house and that is where she resides to date. Her children with Gabriel Wekesa are entitled to the land. Before the deceased's death, he subdivided his land as follows: Gabriel Wekesa Wamocho 10 acres, Naikobo Mukui Simiyu 12.5 acres, Francis Haron Wamocho 11 acres and Erick Wafula 1 acre.
 10. Francis Haron Wamocho (Dw1) testified that he relies on his proposed mode of distribution. On cross-examination, he testified that the deceased land is 34 acres and the deceased sold 2 acres to the factory and gave to his grandson. He testified that only 30 acres are available for distribution.

Analysis and Determination

11. I have considered the application for confirmation of grant and the subsequent affidavits in support, the affidavit of protest and the evidence by the parties. This court is first called to determine who are the beneficiaries of the deceased's estate as various modes of distribution proffered had included his grandchildren. The deceased had 3 sons and 7 daughters: Gabriel Wekesa Wamocho; Naikopo Mukui Simiyu; Francis Haro Wamocho; Regina Nasike Wamocho; Naliaka Wamocho; Priscilla Nelima Wamocho; Esther Wamocho; Agnes Wamocho; and Rachael Wamocho.
12. The mode of distribution by the Petitioner included the deceased's grandchildren. If a parent dies before a grandparent, their child (the grandchild) inherits directly from the grandparent's estate. The petitioner could therefore not include all the deceased's grandchildren as direct heirs of the estate. In *re Estate of Florence Mukami Kinyua (Deceased)* (2018) eKLR the court stated:

“A grandchild is a direct heir to the estate of the grandparent where the parent predeceased the grandparent. The grandchildren get into the shoes of their deceased parents and take



the parent's share in the estate of the grandparents. This was stated in *Re Estate of Wabome Njoki Wakagoto* (2013) eKLR where it was held:-

“Under Part V, grandchildren have not right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”

13. Therefore, the children of Gabriel Wekesa will receive their share from the estate of their father. Similarly, the issue of whether or not Priscah Naliaka Wekesa is a wife under the *Law of Succession Act* is a matter that can only be determined in the succession cause of Gabriel Wekesa. It is only after succession proceedings regarding Gabriel Wekesa have been initiated that the court can proceed to identify his beneficiaries and assess the net estate available for distribution.
14. It is common ground that the deceased before his death, gifted his grandson Patrick Wanyonyi Wekesa land forming part of the estate. The court in *Jacinta Nduku Masai v Leonida Mueni Mutua & 4 others* [2018] eKLR affirmed the holding of the Court of Appeal stated in *Apeli v Buluku* [1980] eKLR that:

“It is trite law that there cannot be property in a dead body and a person cannot dispose his body by will, but it should be noted that courts have long held that the wishes of the deceased, though not binding must so far as practicable be given effect, so long the same is not contrary to the general law or policy.”
15. In this case, Patrick Wanyonyi Wekesa shall be considered a beneficiary in the deceased's estate. It is also not in dispute that the deceased sold 2 ½ acres of the land to Chenjeni F.C.S Ltd. Although the deceased had 10 children, the affidavit of Job reveal that his daughters have not demanded to be included in the distribution of the deceased's estate.
16. In conclusion , having identified the deceased's beneficiaries and the net estate, I hereby distribute his estate as follows:
 - a. Gabriel Wekesa Wamocho 10 acres
 - b. Naikobo Mukui Simiyu 9.5 acres
 - c. Francis Haro Wamocho 10 acres
 - d. Patrick Wanyonyi Wekesa 2 acres
 - e. Chenjeni F.C.S Ltd 2.5 acres
17. This being a family matter there shall be no costs.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 6TH DAY OF MARCH 2024.

R.E. OUGO

JUDGE

In the presence of:



Francis Haron Wamocho- Present

Mr. Alovi h/b for Dr. Khakhula for the Objector

Wilkister -C/A

