



**In re Estate of Christopher Kipngetch Biwott alias Christopher Biwott (Deceased)
(Succession Cause 22 of 2018) [2024] KEHC 3478 (KLR) (12 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3478 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 22 OF 2018
JRA WANANDA, J
APRIL 12, 2024**

BETWEEN

GRACE CHELIMO BIWOTT PETITIONER

AND

PRISCILAH JEPKOECH BUSIENEI 1ST OBJECTOR

LAURA CHEMUTAI BIWOTT 2ND OBJECTOR

RULING

1. This Succession Cause relates to the estate of the late Cristpher Kipngetch Biwott (deceased) who died on 30/11/2016. On 18/06/2018, the Objectors, in their declared capacity as widow and daughter, respectively filed a Petition seeking Letters of Administration over the estate. Although I have not come across a copy of the Grant, the record reflects that the same was given by the Court to the Objectors on 12/09/2018.
2. However, upon the Petitioner's Application, the Grant was by the Ruling delivered by H. Omondi J (as she then was) on 23/09/2020, revoked on grounds that it was obtained fraudulently and upon material disclosure, namely, that the Objectors, despite being aware of the existence of the Petitioner as a co-wife, never disclosed her as such or as a beneficiary or dependent and never obtained her consent.
3. Now before this Court is the Petition dated 1/08/2022 and filed by the Petitioner through Messrs Kalya & Co. Advocates. It seeks that the Petitioner be granted Letters of Administration Pendente Lite over the estate. The Application is expressed to be brought pursuant to Paragraph 10 Rule 12 of the 5th Schedule of the Law of Succession Act and Form P&A 90 of the Probate and Administration Rules. It is then premised on the grounds stated on the face thereof and is supported by the Affidavit sworn by the Petitioner.
4. In the Affidavit, the Petitioner deponed that the deceased died intestate and left behind 2 widows and 6 children, that her co-widow and step-daughter (Objectors) were issued with a Grant on 12/09/2018



but the same was revoked on 23/09/2020, that there is now pending in Court a suit touching on and concerning the distribution of the estate, that the deceased left behind a vast estate which requires administration otherwise it will waste hence the current Petition, that for example, there is machinery which has to be prepared for planting purposes so that income can be derived for continued running of the estate, that further, the estate comprises rental properties and outsiders are starting to encroach over the land because there exists no established structure of management, that she presents the Petition as a widow in accordance with Section 66(a) of the Law of Succession Act as she is the surviving spouse and has the 1st order of preference to be issued with a Grant.

Replying Affidavit

5. The Petition is opposed by the Objectors vide the Objection and Replying Affidavit both dated 3/10/2023 and filed through Messrs Kibungei & Co. Advocates.
6. The Affidavit is sworn by the 1st Objector who has deponed that the contents of the Petitioner's Affidavit are false and laced with lies, that she (1st Objector) is the only widow of the deceased having contracted a monogamous marriage under the African Christian Marriage and Divorce Act (now repealed) and since then, there has never been a divorce or separation and therefore the deceased lacked the capacity to contract a subsequent marriage without dissolving the first marriage, that therefore the Petitioner does not fall within the meaning of Section 3(5) of the Law of Succession Act as she was never a wife and has no claim whatsoever under that Section as read with Section 3(5) of the same Act, that if at all there was any relationship between the Petitioner and the deceased, it was merely a clandestine adulterous affair and the Petitioner cannot be referred to as a wife of the deceased, that the eulogy of the deceased annexed to the Petitioner's Affidavit was unilaterally amended to include the Petitioner as the deceased's wife and her children as the deceased's children, that the same only came to the attention of the Objectors while distributing the eulogy, that therefore, a fraudulent inclusion of the Petitioner in the eulogy cannot justify her alleged marriage, and cannot prove dependency and/or paternity, that the properties referred to were obtained by the deceased jointly with the 1st Objector and therefore the deceased's interest was extinguished upon his death and the properties were passed to the 1st Objector absolutely by virtue of the doctrine of survivorship and the Petitioner has no claim whatsoever in the properties, that as the surviving spouse, the 1st Objector has been diligent in managing the properties and none has been wasted as alleged considering that the deceased close to 7 years ago, that therefore the Petitioner has no right under any law to apply for Letters of Administration or to demand to be involved in the administration of the deceased's estate, that the 2nd Objector, her children and the 1st Objector stand to suffer prejudice if the Grant is made to the Petitioner.

Petitioner's Further Affidavit

7. On 20/11/2023, with leave of the Court, the Petitioner filed a Further Affidavit in which she reiterated that she is a widow of the deceased having conducted a Nandi customary marriage with him and having been recognized by his family as his spouse, that the Objector and the family of the deceased were aware of the Petitioner's marriage to the deceased from the year 2011 and were also aware that the deceased and the Petitioner were blessed with 2 children, that all the assets listed are in the name of the deceased and he procured them individually hence the properties cannot pass under the doctrine of survivorship, that the Objectors have mishandled the estate as they are collecting rental income and squandering it, and that the Objectors are intermeddling in the estate. She then urged the Court to order the Objectors to file an account for the past 7 years in which they claim to have managed the properties.



Hearing of the Application

8. It was agreed, and I directed, that the Application be canvassed by way of written Submissions. The Petitioner then filed his Submissions on 20/11/2023. Up to the time of concluding this Ruling, I had not come across the Objectors Submissions.

Petitioner's Submissions

9. In brief and precise Submissions, Counsel for the Petitioner averred that since revocation of the Grant, the estate has had no Administrator and that this has given the Objectors an opportunity to intermeddle in the estate by collecting proceeds thereof and squandering the same. She cited Section 66 of the Law of Succession Act and submitted that the order of preference starts from the spouses then the other beneficiaries, that in this case, the order begins with the Petitioner who was the wife of the deceased pursuant to Section 3(5) of the same Act. She cited Rule 10 of the 5th Schedule of the Act and urged the Court to use its discretion under Section 54 thereof to grant the Limited Grant to the Petitioner so that she can safeguard the interest of the estate. She also urged the Court to exercise its discretion under Section 27 of the Civil Procedure Act and award costs in favour of the Petitioner.

Determination

10. Upon examination of the Application, and the other pleadings filed, including the Affidavits and respective Submissions, I find the one broad issue that arises for determination to be “whether this Court should grant to the Petitioner the Letters of Administration Pendente Lite over the same estate the subject hereof”.
11. By her Ruling delivered herein on 23/09/2020 and already referred to, H. Omondi J (as she then was) in allowing the Application filed by the Petitioner and revoking the Grant earlier issued to the Objectors, stated as follows:

“I have considered the nature of the prayers sought as well as the annexures thereto. Indeed, there is an acknowledgment in documents which were made public – namely the newspaper death announcement and the booklet containing the funeral programme, which vindicates the applicant’s contention regarding her status and that of the children. There has been no response filed and it is safe to infer that the lack of response is because the respondents realize there is nothing to challenge, and the application remains uncontested. Consequently, the prayers sought are granted”
12. To my knowledge, the above findings have not been set aside and therefore remain in place. It is therefore clear that this Court has already made the finding indicating that the Petitioner was indeed a wife to the deceased and her children the children of the deceased and that they must be involved in the management of the estate. This finding having been made by a Judge of then equal jurisdiction, I have no mandate to resile from it. It therefore remains a valid finding of this Court.
13. It is true that since the initial Grant given to the Objectors on 12/09/2018 was subsequently revoked on 23/09/2020, the estate has remained unadministered. This situation seems to have created an opportunity for chaotic handling and management of the estate and thus rendering it susceptible to mismanagement, wastage and avoidable disputes. There is therefore need that an Administrator(s) be now appointed. My only issue with the present Application however is that it is only seeking a Grant



Pendente Lite which is limited in scope and is more of an interim or interlocutory Grant. In regard thereto, Rule 10 of the 5th Schedule to the [Law of Succession Act](#) provides as follows:

“Administration pendente lite Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the court may appoint an administrator of the estate of the deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing the estate, and the administrator shall be subject to the immediate control of the court and shall act under its discretion.”

14. The Grant Pendente Lite, even if granted, may therefore not be of much assistance and will still not move this matter forward. This Cause, having been in Court since the year 2018, it is now 6 years and now needs to be fast-tracked and concluded. For this reason, I resort to the provisions of Section 47 of the [Law of Succession Act](#) and also Rule 73 of the Probate and Administration Rules which provide as follows, respectively:

Section 47 of the [Law of Succession Act](#)

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.

.....”

Rule 73 of the Probate and Administration Rules

“73. Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

15. The two provisions clearly cloth this Court with wide discretion to do what is necessary to ensure that the ends of justice are met. In the circumstances, rather than issue an interim Grant Pendente Lite as sought herein, I will invoke this Court’s inherent powers and instead proceed to issue a full Grant.
16. The question that now arises is who is the suitable person or persons who should be appointed the Administrator or Administrators?
17. In answering the above question, I note that in this matter, it has not been challenged that the 1st Objector is a widow of the deceased. She has then denied that the Petitioner is also a “widow”. In view thereof and considering the history and circumstances of this dispute, I find the most convenient and fair decision at this stage, to be to appoint both the Petitioner and the 1st Objector as Administrators.
18. Even as I make the above orders, I again draw the parties’ attention to the findings already made herein vide her Ruling delivered on 23/09/2020 by H. Omondi J (as she then was) regarding the Petitioner’s “status and that of the children”. I trust that the parties will treat the said findings as guiding their further steps herein.

Final Orders

19. In the premises, the Petition dated 1/08/2022 partially succeeds and I order as follows:
- i. The Petitioner, Grace Chelimo Biwott, and the 1st Objector, Priscillah Jepkoech Busienei, are hereby appointed joint or co-Administrators in this matter.



- ii. With the issue of Administrators now dealt with, the parties shall now take steps to move this matter forward and conclude it.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 12TH DAY OF APRIL 2024

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WANANDA J. R. ANURO

JUDGE

