



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Barasa Makhumbo (Deceased) (Succession Cause
878 of 2010) [2024] KEHC 5501 (KLR) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5501 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 878 OF 2010**

PJO OTIENO, J

MAY 17, 2024

IN THE MATTER OF THE ESTATE OF BARASA MAKHUMBO (DECEASED)

BETWEEN

STEPHEN JUMA MAKHUMBO 1ST PETITIONER

MARK MAKHUMBO 2ND PETITIONER

AND

ECLAY NAUTUTU BARASA 1ST OBJECTOR

ERICK BARASA MAKHUMBO 2ND OBJECTOR

RULING

1. By their Chamber Summons dated the 22.8.2023, the Objectors, who describe themselves as a son and daughter to the deceased, seek in the main, an order for revocation of the amended grant of letters of administration intestate issued to the administrator, on the alleged grounds that he is a complete stranger to the estate who has excluded the two from the estate while putting same to waste. In particular, the Objectors state that the administrator is a nephew to the deceased and thus stand at a lower priority to them and should not be the administrator to their exclusion. The position taken is that the administrator is the son of one Stephen Juma Makhumbo who was a brother to the deceased and who became an initial administrator having been cited by a creditor to the estate on the basis that the two Objectors were then minors. The current administrator came to that position by having substituted his father who had since died. The two further contend that the administrator should look to inheriting his father's own estate comprised in land parcel No. Bunyala/Namirama/355 and not number 356 which belongs to the deceased.
2. After being served with a Replying Affidavit in which the Administrator contended that the two Objectors are not blood children to the deceased but, his step sibling, born of Stephen Juma Makhumbo, the Objectors then, with the leave of the court, filed a joint further Affidavit and narrated



the chequered history of the cause and exhibited among other documents a ruling in Citation Cause No. 61 of 2010, by which the court dismissed a citation against the administrator's father on the basis that the Citor lacked capacity to bring same. They equally exhibited an Affidavit of Protest by the administrator's father against the Summons for Confirmation brought by the original Petitioner, in which the administrator's father recognized the two Objectors as beneficiaries entitled to shares in the estate. Equally exhibited was a consent on distribution in which the two are accommodated even though not signed by them. On the basis of the Affidavit in support of the Summons for Revocation and the Further Affidavit, the Objectors pray and wish that the grant be revoked and the two appointed the Administrators.

3. The Summons was opposed by the administrator by his Replying Affidavit sworn on the 13.10.2023 where it is asserted in the main that he wishes not to disinherit the two Objectors being his step siblings by virtue of sharing a father, Stephen Juma Makhumbo; that he has continued to lease the estate property and uses the proceeds to meet the legal costs of the cause then reiterate that the two Objectors are not blood children of the deceased but children to his own father, Stephen Juma Makhumbo. He then avers that he was validly appointed by the court then asserts that there have been disputes in the family which was settled and exhibits an alleged agreement, not legible, as well as a letter authored by Abasaya Welfare Association supporting his position and entitlement to the administration.
4. In addition, the administrator assets that prior to his death, the deceased had entered into a sale agreement with one Joash Ochwaya for the sale of a portion of the parcel of land measuring five (5) acres which together with a loan from Agricultural Finance Corporation are liabilities to the estate which he has been discharging by the activities being carried out on the land. Lastly, he accuses the Objectors of bad faith in waiting for Stephen Juma Makhumbo to die before asserting their rights as heirs to the deceased herein.
5. The matter was directed to be canvassed by way of written submissions pursuant to which directions the Objectors filed Submissions dated 1.2.2023 while those by the administrator are dated 9.01.2024.
6. The court has studied the said Submission and given same the due and deserved consideration and discerns the issue for determination to be whether, on the evidence availed to court, the two Objectors are children to the deceased and two persons entitled to information and involvement in the administration and the process leading to the grant.
7. From the Affidavits filed by both sides, it is common place that the Objectors and the administrator are at the furthest cousins but at the very best, in the words of the administrator, half siblings having been fathered by one man. If cousins as asserted on the account of the Objectors, then the two Objections stand in priority to the administrator. However, if half siblings, then they stand in pari passu with him. In both cases, they are persons entitled to have been contacted, notified and ought to have given consents in terms of section 66 as read with Part V of the Act and Rule 7 (7) of the [Probate and Administration Rules](#).
8. To the extent that there is no evidence that Rule 7 (7) was complied with but floated, the grant issued to the administrator cannot be left to stand. It was obtained by concealment of material facts and thus the process to obtain it was defective in substance. On that basis the grant is revoked.
9. To more the administration forward, the two Objectors are appointed joint administrators in place of current administrator.
10. Let the new administrator file Summons for Confirmation of grant within 30 days from today and serve same upon every person entitled to any claim in the estate for same to be heard on the 3.7.2024.



11. When served, any person aggrieved with the proposed mode of distribution shall file an Affidavit of Protest within fourteen (14) days after service.
12. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 17TH DAY OF MAY, 2024.

PATRICK J. O. OTIENO

JUDGE

In the presence of:

Ms. Chesire for the Administrator

No appearance for Onyonje for the Objectors

Court Assistant: Polycap

