



REPUBLIC OF KENYA



In re Estate of Mwanaiti Munyanya Wandanyi (Deceased) (Succession Cause 26 of 1989) [2024] KEHC 5503 (KLR) (17 May 2024) (Judgment)

Neutral citation: [2024] KEHC 5503 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 26 OF 1989**

PJO OTIENO, J

MAY 17, 2024

IN THE MATTER OF THE ESTATE OF MWANAITI MUNYANYA WANDANYI (DECEASED)

JUDGMENT

1. The genesis of the subject cause is that following the death of Mwanaiti Munyanya Wandanyi (“the deceased”) on the 6th day of August in the year 1988, the Petitioner by way of petition for letters of administration intestate dated 24th January, 1989 petitioned this court for a grant.
2. In the said petition, he listed himself, one Gerald Shikunyi, Were Mutachi and Mango Manyasa as the beneficiaries of the estate of the deceased whose estate comprised of property known as North/Wanga/732 measuring 5Ha.
3. A grant was subsequently issued on 23rd November, 1990 in the name of the Petitioner and later confirmed on 28th April, 1997 distributing the estate thus; Ismael Tabuche Hamisi; 5 acres; Gerald Shikunyi Mwitakho; 7 acres and Mango Manyasa 1 acre.
4. The Objectors have now moved the court claiming a share of the deceased estate on the basis that they are grandchildren while the administrator is merely their cousin.
5. The court invited the parties to give oral evidence to understand if the estate the subject of this cause was held in trust by the deceased.
6. The Petitioner testified that the deceased was his grandmother and who she was married to Hassan Munyanya with whom they sired Asha Makokha Munyanya, who was his mother. He claims that when Hassan Munyanya died, the Objector’s grandfather would help the deceased with work until he ran away with her money. He stated that when the deceased was alive he disposed part of the estate to Jared Shikunyi and to Emanani Primary School thus remaining with 3 acres. His mother later died and he was left under the care of the deceased with whom he stayed on the 3-acre piece of land. Prior to the death of the deceased, she alleged she gave the Objector’s father land measuring 1 acre leaving him with 1½ acres.



7. Mr. Abdalla Shikunyi Mango was the second to take the stand and gave evidence that he was a grandson to Munyasa Wanyinya who was a brother to Hassan Manyanya, the grandfather to the Petitioner. He stated that he wants to inherit the deceased's estate whom he stated was his step grandmother adding that the petitioner ought to have included all grandchildren in the succession proceedings. He stated that it was unfair for the Petitioner to get 1½ acres of the estate while they got only one acre. In fact, he added that they even want the school which has been there for a while evicted.
8. Mr. Kassim Munyasa testified that they have been occupying one acre of the estate and that they were given one acre without their knowledge of a succession being done.
9. Mr. Hassan Munyanya refuted the petitioner's claim that the deceased sold land to Jerald Shikunyi and the school and argued that there is no agreement for sale. He stated that the school was there during the lifetime of the deceased and that before the school was built one Shikunyi was using the land.
10. The claim by the Objector is reiterated at paragraph 9 of the Further Affidavit sworn on 11th November, 2022, when the Objectors claim that the deceased estate was ancestral land and they are thus entitled to a portion of the land.
11. The pivot of the dispute then is if the estate of the deceased was an ancestral land and if the deceased holding the land in trust for the Objectors family?
12. The law relating to ancestral land and its ingredients was set out in the case of *Isack M'Inanga Kiebia vs Isaaya Theuri M'Lintari and another* (2018) eKLR where the court noted the elements to be; i) that the land before registration belonged to family, clan or group; ii) the claimant belonged to the said group clan or family; iii) the relationship between the claimant and the title holder was not remote; iv) the claimant could have been entitled to be registered as the owner were it not for some intervening circumstances and lastly the claim was directed against the registered owner who is a member of the family clan or group.
13. The Objectors have not tendered evidence to the effect that the land in question was held in trust for their grandfather and children of the deceased and they only mention that the deceased became the registered owner because their father and his father were not around at the time with no further details. Nonetheless, questions on determination of existence of a customary trust are a preserve of the Environment and Land Court under the section 13 of the *Environment and Land Court Act*. That position of the law is however a side consideration in a succession dispute and not available before this court. It is outside the court's jurisdiction.
14. For an Applicant to merit an order for revocation of grant, he must demonstrate that he was a person entitled to inherit from the deceased and that he has been disinherited by unjustifiable acts or omission by the Petitioner. One may also demonstrate that he stands in a position of priority or pari passu with the Petitioner.
15. The Objectors have failed to bring themselves within these parameters. Their claim is strictly not one for inheritance but may take the form of a claim in trust. It merits not the order for revocation of grant.
16. A perusal of the petition shows that Mango Munyasa participated in the succession proceedings and a look at the jurat shows that he appeared before the Resident Magistrate, Mumias as one of the beneficiaries of the estate of the deceased and confirmed as well as approved the proceedings. When the grant was confirmed on 28th April, 1997, it appears Mango Manyasa was alive and he never questioned the mode of distribution. The court infers Mango Munyasa better understood the history of the land the subject of this cause better than his children, the Objectors herein. Their decision to move the court over a decade later on the ground that the estate was ancestral land and that their father was not



aware of the succession proceedings cannot be believable. In fact, if one looks at the petition and the accompanying documents, the Objectors' father signed all the documents which lists other purchasers of the estate as beneficiaries.

17. The court finds the application for revocation of grant most ill-conceived and orders it dismissed. There shall be no order as to costs.
18. As the grant was long confirmed, let the court file be closed.

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

PATRICK J. O. OTIENO

JUDGE

In the presence of:

No appearance for the Petitioner

1st and 3rd Objectors present

2nd Objector reported dead

Court Assistant: Polycap

