



REPUBLIC OF KENYA



In re Estate of the Late Reuben Wanyonyi (Deceased) (Succession Cause 68 of 1997) [2024] KEHC 8324 (KLR) (14 June 2024) (Ruling)

Neutral citation: [2024] KEHC 8324 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 68 OF 1997**

REA OUGO, J

JUNE 14, 2024

IN THE MATTER OF THE ESTATE OF THE LATE REUBEN WANYONYI (DECEASED)

IN THE MATTER OF

ASHON SIKOLIA WANYONYI 1ST PETITIONER

LUKA MAKOKHA WANYONYI 2ND PETITIONER

RULING

1. Ashon Sikola Wanyonyi hereinafter referred to as the applicant has filed an application dated the 17th December 2023. The application is brought under Part VII Sections 46, 76, 82, and 83(1) of the [Law of Succession Act](#) & Rules 49,59 (1,3,5 & 6), 63 (1) and 73 of the [Probate and Administration Rule](#). The applicant seeks the following orders;
 - a. That the honorable court substitutes the deceased Petitioner Luka Wanyonyi with Daniel Sikolia Wanyonyi.
 - b. That the honorable Court order rectification of the grant to reflect the changes.
 - c. That the honorable court to make a partial confirmation of the following properties of the estate herein having been fully distributed to the bonafide beneficiaries as per the annexed schedule marked ASW-11.
 - d. The administrators be at liberty to pursue the remainder of the estate having disputes.
2. The application is supported by the grounds on the face of the application and the affidavit of Ashon Wanyonyi Sikolia dated 18.12.2023. The grounds are that; the co-petitioner Luka Makokha Wanyonyi passed on , hence the need to have him substituted with Daniel Sikolia Wanyonyi as a Co-administrator; the family members have resolved and shared out part of the estate save for the properties that are still under various court cases; the dispute that related to plot no. 74 has been determined and or settled in various decisions and the beneficiaries have unanimously agreed to dispose of the same and share



- out the proceeds to all beneficiaries in the order provided (per house); the remaining properties have pending court cases that have not been determined hence the need to have the two administrators pursue quick determination of the estate; that there is need to move and have the matter fully settled as the same has been pending in court for a long time and lastly all beneficiaries have agreed on all the properties that have been set out in the schedule for partial confirmation.
3. He avers in his supporting affidavit that they filed this cause in 1997 and there was partial confirmation of some of the properties that had been identified for sharing among the beneficiaries. He lists all the beneficiaries left in the seven (7) houses by his late father the deceased, see paragraph 6 the schedule of distribution in the 7 houses. He avers further that all the disputes that related to the plot namely Webuye Municipality plot no. 74 were all resolved. The two remaining properties have not been shared out due to ongoing cases that are now pending in court. That some beneficiaries some of the beneficiaries have died without enjoying their share of the estate. They were collecting rent to pay various expenses and fees for the young beneficiaries of the estate but Selina their sister filed cases and interfered with the tenants leading to countless battles that resulted in the rents from plot No. 74 being deposited in court vide case No. 160 of 2017 now withdrawn.
 4. Benjamin Barasa Wafula filed a replying affidavit as a Nominee of Selinah Namalwa Masoni. He has filed a lengthy affidavit which I have read and have picked what is relevant to this application. The affidavit challenges the court's decision on plots 74 and 75 and gives a background of the deceased's plot. It challenges the consent filed, talks of intermeddling, violation of sections 83 (e-g) & 95 (1a-c) of the Law of Succession Act Cap 60, who qualifies to petition the deceased's estate. It is averred that the families of the deceased namely; Rebeun Wanyonyi Sikolia, Esther Nafula Wanyonyi and Isaac Wasike Wanyonyi must elect joint representatives from each family. It is also averred that the 1st and 2nd petitioners intermeddled with the deceased's property. The court should appoint a neutral who will work with the nominee to execute the deceased's estate. That the 1st petitioner has sold the entire estate bluffing fellow siblings with peanuts instead of executing the deceased's estate. That the legitimate beneficiaries of the deceased Reuben Wanyonyi Sikolia should share the residue of the estate and that whoever sold the deceased's assets should settle his vendees individually. That the 1st petitioner and their counsel Mr. Sichangi have forged and falsified land claims documents without intestate estate ownership proof. The respondent in their last paragraph seeks that this court stays the execution of the late Reuben Wanyonyi Sikolia's estate pending the determination of ELC Case No. 160 of 2017 as well as ELC Petition No. E002 of 2024 pursuant to a Ruling delivered on the 25th of April 2023. Lastly, it is deponed that the minutes consented on 10th February 2018 and the mode of sharing dated 17th December 2023 reveal that the 1st and 2nd Petitioners/ Applicants are under the whim of Mr. J. W. Sichangi of Sichangi & Co. Advocates and are continually violating the Law of Succession Act Cap 160 Sections 83 (e-g) and 95 (1a-c).
 5. The application was canvassed by way of oral submissions on 5/3/2024. Mr. Sichangi for the applicant submitted as follows; the family has sat down and chosen Daniel Sikolia to substitute Lukas as stated in the application. If the application is granted he will be a co-administrator. They also seek that there be a partial confirmation of the properties of the estate to be distributed to the estate and that the administrators be at liberty to pursue the remainder of the estate in dispute. That they have itemized the mode of distribution per beneficiary as per seven (7) houses. On the replying affidavit filed by Benjamin Barasa, it was submitted that the deponent is not a son of the deceased and that the said affidavit does not raise any relevant issue to the present estate. That the matters raised are not within the estate and the properties mentioned do not form part of the estate. The affidavit is drawn by a stranger to the estate and does not address the issues raised in the estate. That the affidavit should be struck off as it does not conform to the requirements if it were to be taken to be a protest. That it is a beneficiary is



the one to swear an affidavit of protest stating that there is a beneficiary who has not been allotted a proper share. The deponent is not listed in Form No. 5A in the estate. He has imposed himself on the estate he is not included as a party in the estate. that the application should be allowed as prayed as this is an old matter of 1997. Members of the 1st house who are still alive have consented to the application and identified the properties for distribution. The estate was partially confirmed by Justice Mbitio. The applicant has rendered a true account of how the estate was distributed.

6. Mr. Barasa (Barasa) submitted as follows; he relies on the affidavit in support of the application. Selina opposes the application and that she admits to being made the 2nd administrator instead of Daniel. There is a need to do a search on the properties listed by Ashon to prove ownership of the properties. That the petitioner has sold the entire estate without executing the will of the beneficiaries. That property belonging to the deceased's estate has been given to individuals who are not beneficiaries of the estate of the deceased.
7. Mr. Sichangi in response stated that the deponent of the replying affidavit mentions his name yet he is not an administrator. The family approached him as a counsel to act for them in the matter. The respondent has not listed the names of the beneficiaries not a list of the properties. The estate has not been wound up. That the parcel of land the subject of the ELC matter is not part of the properties to be shared in this matter. They have no objection to Selina being made an administrator.

Analysis And Determination

8. I have considered the application before me and the oral submissions made. The issues for determination are; whether can Barasa be a nominee of Selina and whether the court can grant all the prayers sought in the application under consideration. The [Law of Succession Act](#) (LSA) Chapter 160 of the Laws of Kenya does not define who is a Nominee. A Nominee in law as per the general definition, is a person or entity who is requested or named to act for another, such as an agent or trustee. A nominee can be a trustee appointed to hold property or assets for the benefit of another individual or entity. A nominee can also be a potential successor to another's rights under a contract. The [Black's Law Dictionary](#) 10th Edition defines a nominee as " A person designated to act in place of another, in a very limited way. A party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others."
9. Barasa is not a beneficiary of the deceased's estate nor does he have interest in the estate of the deceased nor did the deceased appoint him as trustee of his estate. I agree with Mr. Sichangi that he is a stranger in the matter. Selina being the daughter-in-law of the deceased is a beneficiary in the estate with a beneficial interest. She represents her late husband's family. Being a beneficiary recognized in law she qualifies to be an administrator. Barasa does not even fall within the provisions of section 14 of the [Law of Succession Act](#) Cap 160 which provides as follows;
 14. Administration limited to suit When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution.



10. Selina has appeared severally in open court and expressed her desire to have Barasa represent her. I find that Barasa has no locus standi in the matter, he is a stranger, is not related to the deceased as a son or brother(sibling), and cannot be her nominee.
11. The LSA provides that the estate of a deceased person can have up to four (4) administrators, see sections 58 and 66 of the Act. The applicant's reason for seeking a substitution has merit as the estate of the deceased's needs to be wound up. The applicant has no objection to having Selina as an administrator in the matter. I find that there was no affidavit showing that the other family members have an objection to Daniel being appointed as an administrator. The deceased's estate needs to be wound up. To help the parties move with speed in this matter I will appoint Daniel Sikolia Wanyonyi to be the 2nd administrator. To safeguard the interests of the estate of Ben Masoni I appoint Selina Namalwa Masoni to be the 3rd administrator. The 1st administrator/ applicant shall return the grant issued in the names of Ashon Sikolia Wanyonyi and Luka Wanyonyi for cancellation forthwith and a fresh grant shall be issued in the names of the 3 administrators forthwith.
12. On prayers c and d of the application, it is my view that the administrators need to have a meeting to find out what is left of the deceased's assets for distribution. They shall have a meeting with the rest of the family members within 45 days from the date of this Ruling and thereafter apply to confirm the grant on the remaining properties of the deceased. The administrators shall do a search of the properties alleged to belong to the deceased and file the official search documents within a period of 45 days. Thereafter they can jointly file an application for confirmation of the grant and if they cannot agree then one of them can file the application within 45 days and serve on the others.
13. Selina is now an administrator. She is the only one to file any affidavit in the matter. Any affidavit filed by Barasa shall be expunged from the record as he is not a beneficiary in the deceased's estate nor does he have a beneficial interest in the estate.
14. This matter will be mentioned on the 25th of July 2024 before High Court No. 1 for directions on the application to be filed by the 3 administrators.
15. The court urges the parties to cooperate and aim at winding up the deceased's estate. This matter has been in court since 1997, 27 years since the death of the deceased.
16. Costs shall be in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT BUNGOMA THIS 14TH DAY OF JUNE 2024.

R.E.OUGO

JUDGE

In the presence of;

Mr. Sichangi for the Applicant

Benjamin Barasa in person

Selina N. Masoni

Wilkister – C/A

