



REPUBLIC OF KENYA



In re Estate of the Late Kyale Mwendwa (Deceased) (Succession Cause E2167 of 2021) [2024] KEHC 9476 (KLR) (Family) (25 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9476 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E2167 OF 2021
HK CHEMITEI, J
JULY 25, 2024
IN THE MATTER OF THE ESTATE OF THE LATE KYALE MWENDWA (DECEASED)**

BETWEEN

JACINTA WANGOVE MWENDWA APPLICANT

AND

VONZA KAVILA MWENDWA 1ST RESPONDENT

MUMO IKUI MWENDWA 2ND RESPONDENT

NZAMBU MULAIMU MWENDWA 3RD RESPONDENT

AND

SAMMY MUVELAH EXECUTOR

RULING

1. Before this court are two sets of applications which shall be dealt with in this ruling.
2. The first application is dated 14th July 2023 by the Applicant herein Jacinta Wangove Mwendwa seeking the following reliefs:-
 - (a) That this court be pleased to make a reasonable provision for Jacinta Wangove Mwendwa, Munyoki Mwendwa and Mukeli Mwendwa from the net estate of the deceased.
 - (b) That the court be pleased to adequately provide for Jacinta Wangove Mwendwa, Munyoki Mwendwa and Mukeli Mwendwa from the net estate of the deceased.
 - (c) Any other order that deems necessary from this court.



3. The Applicant prayed for costs as well.
4. The application is based on the grounds thereof and the sworn affidavit of the Applicant dated the same date.
5. In her affidavit the Applicant has listed all the beneficiaries from the deceased two houses. She was the widow and the deceased second wife. They had two children with the deceased, namely Munyoki Mwendwa and Mukeli Mwendwa.
6. She deponed that in his will the deceased did not provide adequately to her household and that some of the properties contained in the Will were acquired by her and therefore ought not to form part of the will. She also complained in her affidavit that the deceased provided more to the 1st house than his second house.
7. In light of the fact that the deceased estate was worth over Kshs. 4 billion it was in the interest of justice that she be provided with as prayed in the application.
8. The Respondents in their joint affidavit dated 8th September 2023 have strongly opposed the application by the Applicant who is their step mother. They argued that the Applicant was insincere as the deceased in his Will adequately provided for her and in particular the two children. For instance, that the estate has continued to provide the sum of Kshs. 200,000 monthly directed in the Will without fail.
9. They also accused the Applicant of bringing this application yet a similar application dated 30th August 2022 seeking same orders had been dismissed by the court.
10. They also deponed that there was no evidence to show that the Applicant jointly purchased the properties mentioned in her affidavit with the deceased. They therefore prayed that the application be dismissed.
11. I have perused the application as well as the submissions on record. Respectfully I do not find the application merited for the following reasons.
12. First of all, the issues which the Applicant has raised are so fundamental and weighty that it generally challenges the will and it cannot be resolved by way of a simple affidavit. For example, the properties she has mentioned under paragraph 7 of her supporting affidavit cannot be dealt with in this application. The same is contained in the deceased will and can only be challenged by way of oral evidence.
13. Secondly and as correctly stated by the Respondents, there is no evidence presented by the Applicant indicating her financial needs. All that she has attached to the supporting affidavit cannot be termed financial requirements. She has attempted to show how they acquired the properties with the deceased.
14. In my view therefore the Applicant ought to challenge the application dated 31st January 2023 seeking to confirm the grant. Otherwise I believe that the sum of Kshs. 200,000 monthly paid out of the estate for the upkeep of her children beside other details in the will are adequate. She has not disputed this fact.
15. The application is otherwise dismissed.
16. The second application is by the Respondents and is dated 29th June 2019 seeking the following orders:-
 - (a) That the court be pleased to issue a temporary injunction against one Sammy Muvellah the executor named in the deceased last Will and testament staying any further action by the said Sammy Muvellah in acting in any manner that is contrary to the spirit and letter of the



declaration of trust made by him dated 24th August 2015 pending the confirmation of the certificate of grant issued by this court.

17. The Applicant prayed for the costs of the application.
18. The application is supported by the grounds thereof and the joint sworn affidavit of the Applicants sworn on 6th July 2023.
19. The beef between the Applicants and the executor has to do with the way he was managing the deceased shares at Muvosunza Investment Limited in which he was acting as a trustee as per the grant issued to him. The Applicants argued that the executor acted contrary to their wishes and agreed with the advocates.
20. That the issue was to do with an election at hand in which Mr Ngangi and Mr Njuguna were elected as directors yet they did not meet the conditions.
21. They accused him of delaying the confirmation of the grant and eventual distribution of the estate as per the deceased Will.
22. Sammy Muvellah the executor has responded via his replying affidavit sworn on 28th July 2023 arguing among others that the Applicants had filed similar suits at the Commercial And Tax Division No E242 OF 2023 which was still active.
23. That the prayers in the said suit he deponed were word for word with the prayers herein but Justice Njoki Mwangi declined to grant the same. They then filed this application but Nyaundi J declined to grant them orders as well. In his view the Applicants were simply forum shopping.
24. He went on to state that the issues surrounding Muvosunza Investments Limited has an arbitration clause and he has already made an application within the above suit to refer the same for arbitration.
25. He argued that the shares therein do not belong to the Applicants but the estate and that he was acting according to the dictates of the will. That he had already applied for the confirmation of the grant to which the Applicants and others have objected to.
26. He generally denied that he has abrogated his responsibility as an executor of the will and that he ought to be allowed to complete the exercise as per the will.
27. One Prof. Suki Kaloo Mwendwa a beneficiary of the estate came to the aid of the executor vide his affidavit dated 18th October 2023. He accused the Applicants of delay tactics and raising issues which have already been raised in the other courts. According to him the application was res judicata.
28. He prayed that the application for the confirmation of grant be heard and determined.
29. The court has perused the application herein and the responses by the executor.
30. The issue in my view is not within the jurisdiction of this court. Muvosunza Investment Limited is a company with a shares. The deceased estate owned I belief some shares which is contained in his Will. The issues contained in the said will are yet to be finalised as the grant is yet to be confirmed.
31. The issues of day to day running of the company are managed through its Articles and Memorandum of Association in line with the Companies' Act. If the Applicants have issues which they indeed have because they have filed the above stated suit at the Commercial and Tax Division of this court, then that is the right forum.
32. What ought to come before this court is simply the issues of inheritance as provided by CAP 160. That will be captured well when the application for confirmation of grant shall be dealt with. In any event



the executor of the will has already responded to the suit and they ought therefore to take their battle to the said court.

33. For now, I decline the application for want of jurisdiction.
34. I have seen in their affidavit of support that they have accused the executor of delaying the confirmation of grant. I think on the contrary they are the ones delaying.
35. The application for confirmation of grant dated 31st January 2023 has been on record. Their step mother Jacinta Mwendwa has opposed the same. I presume there are others including the Applicants who are interested with the Will and they as well may have issues to raise either in support or opposition. I do not find therefore any reason for now to accuse the executors of any delay.
36. In the premises I do not find merit in this application just as in the application 14th July 2023 and the same is as well dismissed.
37. Each party in the two applications shall meet their respective costs.
38. In the meantime, I direct that the application for confirmation of grant dated 31st January 2023 be set down for directions and subsequent determination forthwith.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 25TH DAY OF JULY 2024.

H K CHEMITEI

JUDGE

