



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Dismas Wangalwa Naulikha (Deceased) (Succession Cause 270 of 2010) [2024] KEHC 8097 (KLR) (3 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8097 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
SUCCESSION CAUSE 270 OF 2010**

**REA OUGO, J**

**JULY 3, 2024**

**IN THE MATTER OF THE ESTATE OF DISMAS WANGALWA NAULIKHA- (DECEASED)**

**BETWEEN**

**DISMAS NAULIKHA NABISWA ..... PETITIONER**

**AND**

**REDEMPTA WANGALWA NAMAEMBA ..... OBJECTOR**

**RULING**

1. Dismas Wangalwa Naulikha, the deceased, died on the 21.3.1995. on 23.8.2010 Dismas Naulikha Nabiswa, a son of the deceased filed a petition for letters of administration intestate. The only asset of the deceased listed in his petition is Land parcel Number West Bukusu / North Nyanga/147 appropriately 4.8 HA ( about 11.8 acres).
2. On the 29<sup>th</sup> of September 2010 a grant of letters of administration intestate was issued to Cosmas Charles Nabiswa Wangalwa. On the 23<sup>rd</sup> of February 2012, the petitioner obtained a limited grant after Cosmas Charles Nabiswa Wangalwa died on 15.3.2011.
3. A certificate of confirmation of the grant was issued on the 19<sup>th</sup> of March 2012 to Derrick Naulikha Nabiswa according to the provisions of section 71 ( 1) and (3) of the Law of Succession ( LSA) Act. Land Parcel No. West Bukusu/ North. Myanga/147 shared by 8 personally namely; Cornelius W. Wamalwa- 0.0050HS, 0.047HA, 0.166HA 7 1.247HA, Vincent Namasaka Wafula -0.079HA, Chrispinus Simiyu Wabwoba-0.091HA, The Word of Life Christian Fellowship INC. -0.063 HA, Derrick Naulikha Nabiswa -0.773HA, Rosemary Ekesa Nyade - 0.046HA, Evans Kahemba – 0.396HA and Robert Tukai Mangoli Wamila -0.551 Ha. This was done according to filing the application dated 2 May 2011 where Derrick Naulikha Nabiswa sought to be substituted as the petitioner/ administrator and that upon substitution a grant of letters of administration issued to the petitioner ( deceased ) on 28.9.2010 be confirmed.



4. The subject of this ruling is the Summons for revocation dated 19.2.2024 filed by Redempta Wangalwa Namemba, the applicant. In her grounds on the face of the application and the supporting affidavit, she avers as follows; she is the biological daughter of the deceased. That at the time the petition was filed the petitioner did not include the rightful beneficiaries of the estate. The petitioner did the succession secretly without her knowledge and other beneficiaries. The petitioner even colluded with the area chief who wrote a letter claiming that he was the only beneficiary of the estate of the deceased, instead, buyers were included. The petitioner thereafter proceeded to obtain the certificate of confirmation of the grant and he obtained titles. The petitioner has denied the rightful beneficiaries their legitimate estate. She therefore seeks that the grant of letters of administration be revoked until such time that she is included as a beneficiary and/or enjoined as a co-petitioner.
5. In her statement filed after this court gave directions that the matter proceed by way of viva voce evidence, she reiterates what she deposed in her supporting affidavit, and in paragraph 5 she states that the deceased was survived by the following;
  - a. Anastacia Makhanu - 1<sup>st</sup> wife
  - b. Getrude Mausilia Wanaglwa
  - c. Cosmas Nabiswa Wangalwa
  - d. Batista Nayama Wangalwa
  - e. Richard Wamalwa Wangalwa
  - f. Redempta Namaemba Wangalwa
  - g. Willborda Nakhungu Waangalwa
  - h. Colleta Khisa Wangalwa
  - i. Frida Nakhumicha - 2<sup>nd</sup> wife,
  - j. Leonard Wabwile Wangalwa
  - k. Justus Wanjala Wangalawa.
6. Derrick Naulikha Nabiswa filed a replying affidavit dated 16<sup>th</sup> April 2024. He deposes as follows; when his late father Cosmas Charles Nabiswa Wangalwa who was the petitioner died he ( the current petitioner)took over the matter to continue with the duties of administration of the estate of the deceased his late grandfather. He was not involved in the initial process and only took over the matter after his father passed on to ensure the administration of the estate. It is not true that he petitioned for the letters of administration secretly without the knowledge of the objector and the other beneficiaries as alleged.

### **Analysis And Determination**

7. The main issue in this matter is whether the grant issued to the respondent should be revoked. At the hearing, the parties reiterated what is deposed in their affidavits as their evidence. The petitioner admitted that the objector is his aunt the daughter of the deceased who was his grandfather. The objector informed the court that as a family they did not know that Cosmas died before completing the matter in court nor did they allow the petitioner to proceed with the matter. She informed the court that some of her siblings were still alive but none were in court with her on the day of the hearing.



8. Section 76 (b) of the Law of Succession Act provides as follows that; “a grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion that ,the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case”
9. It is not in dispute that at the time the petitioner’s father filed the petition in this matter he did not include the members of his family, his siblings nor were they aware. In the petition filed in this cause, Cosmas Charles Nabiswa Wangalwa was listed as the only surviving deceased as a son. The late petitioner Cosmas failed to disclose material facts to the court that he had other siblings. He concealed this very critical information as his siblings are beneficiaries recognized in law. The persons listed in the certificate of confirmation are not sons or daughters of the deceased. This is a clear case that warrants a revocation of the grant and the certificate issued subsequently. The petitioner cannot argue that he was merely proceeding with what his father started. A wrong done cannot be cured with another wrong. He has a lawyer who should have advised him on the provisions of section 76 of the Law of Succession Act Cap 160 and also that any siblings of his late father were entitled to inherit from the estate of the deceased, that they rank in priority.
10. I need not say more; the objector has demonstrated that the orders she seeks are warranted. The petitioner Derrick Nauulikha Nabiswa has not been truthful, further, he is a grandchild, and in law, the appointment of grandchildren is qualified, in the sense that they rank in priority only where their parents are dead. Though his father is deceased I find that his uncles and aunties who are still alive rank in priority over him. Having not been truthful I find that he does not warrant being an administrator of the estate.
11. I therefore revoke the grant issued to the petitioner dated 23.2.2012 and the certificate of grant issued on 16.3.2012. Any title or titles issued after the certificate of the grant shall be cancelled and the title shall revert to the name of the deceased Dismas Wangalwa Naulikha. I also appoint the objector Redempta Wangalwa Namaemba to be the administrator of the estate of Dismas Wangalwa Naulikha. The petitioner shall return the grant and certificate to this court forthwith for cancellation. A fresh grant shall be issued in the name of Redempta Wangalwa Namaemba forthwith. Costs shall be in the cause.

**DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 3<sup>RD</sup> DAY OF JULY 2024.**

**R.E.OUGO**

**JUDGE**

In the presence of:

Mr. Anyonje -For the Petitioner

Derrick N. Naabiswa/Petitioner - Present( in custody at Nairobi West Prisons)

Redempta Wangalwa Namaemba/ Objector - present in person.

Wilkister/ Diana - C/A.

