



**In re Estate of the Late John Wangoliko Kisiangani alias John Wangoliko (Deceased)
(Succession Cause 528 of 2012) [2024] KEHC 10679 (KLR) (1 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10679 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 528 OF 2012
REA OUGO, J
AUGUST 1, 2024
N THE ESTATE OF THE LATE JOHN WANGOLIKO
KISIANGANI ALIAS JOHN WANGOLIKO.....DECEASED**

IN THE MATTER OF

ALICE NAFULA KIMININI OBJECTOR

RULING

1. John Wangolikhoo Kisiangani, the deceased, died on the 25.2.2005. Hudson Sifuna Wafula Busiyile a son of the deceased filed a petition for letters of administration on 17.12.2012. In his affidavit filed with the petition, he named the beneficiaries who survived the deceased, 14 in number, from 3 households. The deceased had 4 wives and 11 children namely;

1st House

- a. Perita Nakumicha -1st Widow
- b. Hudson Sifuma Wafula Busiyile -son
- c. Justus Simiyu Wangoliko -son
- d. Francis Busiyile Wangoliko -son (Deceased)
- e. Maurice Wanjala Dick Wangoliko -son
- f. Patrick Kisaka -son

2nd House

- a. Leah Kasima -2nd Widow
- b. Richard Busiyile -son
- c. Wycliffe Wafula -son



- d. Alfred Lumbasi -son
3rd House
 - a. Zipporah Lunani -3rd Widow
 - b. Joseph Masai Murumba -son
4th House
 - a. Alice N. Kiminini - 4th Widow
 - b. Dennis Masai -son
2. A grant of letters administration intestate was issued on the 11th of April 2013 to Hudson Sifuma Wafula Busiyile, hereinafter referred to as the petitioner. An application to confirmation of the grant dated 18.10. 2013 was filed by the administrator seeking to confirm the grant issued on 11.4. 2013. In his affidavit dated 18.10.2013, he states that the deceased left behind property title No. Ndivisi/ Mihuu/ 36 measuring approximately 17.1 acres. In paragraph 7 of his affidavit, he indicates his mode of distribution as follows;
- i. Patrick Makana Kisaka - 1.7. Acres
 - ii. Alfred Lumbasi Wangoliko -1.7 Acres
 - iii. Joseph Masai M. Wangoliko -1.7 Acres
 - iv. Denis Masai Wangoliko -1.7 Acres
 - v. Hudson Sifuma Wafula Busiyile - 1.6 Acres
 - vi. Richard Busiyile Wangoliko -1.6 Acres
 - vii. Justus Wangoliko Simiyu -1.6 Acres
 - viii. Wycliffe Wafula Kisiangani -1.6 Acres
 - ix. Dick Wanjala Wangoliko -1.6 Acres
 - x. Bonface J. M. Wafula - 5 Acres
 - xi. Hudson Sifuma Wafula Busiyile to hold in trust of Shadrack Masai Sibukho until he attains maturity - 1.6 Arces

Grand Total 16,9 Arces.

- 3. On 22.2 2016 Alice Nafula Kiminini (hereinafter referred to as Alice) filed a Summons for Revocation of grant issued to the petitioner. She also sought a conservatory order to preserve Land Parcel No. Ndivisi/36. She also seeks an order of injunction restraining the petitioner from interfering with the suit land until the objection is heard and determined. She prayed that the costs be borne by the petitioner.
- 4. The application is premised on the grounds on the face of the application and the supporting affidavit sworn by the objector dated 18.2.2016. She avers as follows; she is the 4th widow to the deceased. They had 7 children namely; Matrine Wangoliko born in 1987, Dennis Wangoliko born in 1989, Mildred Wangoliko born in 1992, Raso Nasambu Wangoliko born in 1994, Rodah Wangoliko born in 1996, Robai Wangoliko born in 2000 and Elizabeth Wangoliko born in 2004. The deceased died intestate and left behind property Land Parcel Ndivisi/ Mihuu/36 (hereinafter referred to as parcel no. 36).



5. She averred that she did not consent to the petitioner filing the succession proceedings. The petitioner failed to include her and her children in the list of the dependent/ beneficiaries and that he intends to disinherit her and her children despite her family having a right to inherit their share of the estate. The Ndivisi Tribunal allocated her 3.4 Acres but the petitioner had failed to do so. In her affidavit, she also sought leave to file a cross-petition for the grant of letters of administration.
6. The petitioner responded to the objector's application through a replying affidavit dated 1.2.2018. He avers that the objector has listed 1 son and 6 daughters. The deceased had a total number of 26 children. He avers that the deceased planted sugarcane in land parcel No.36 in field number 322150036 which the objector fabricated documents and obtained the transfer of the said cane in her name to the detriment of the rest of the children of the deceased an issue which the family has not questioned, she has harvested all the cane since the death of their father in 2005. On 27/10/2010, the family agreed to survey land parcel No. 36 and found that it measured 16.3 acres only. He explained that given the land measurement, it was decided that the 16 daughters be left out so that each son received 1.6 acres and each widow received zero-point one acre. The agreement was arrived at in the presence of their retired chief. He avers that the objector raised fabricated clan documents hence the tribunal clan a ward case Webuye in CC No.15 of 2011 to the dismay of the entire family. Therefore, the beneficiaries agreed she is not entitled to a share of the 16.3 acres.
7. In an affidavit filed in court on 3.10.2018 which is not dated but is sworn by Richard Busiyile Wangoliko and Hudson Sifuma Busiyile they aver that they agreed as family in the presence of their area Chief Alfred Barasa Walubengo in 2010 to survey the land. The surveyor pointed the sisal stems but the objector uprooted the same. The objector is claiming more land that cannot be found and without the consent of the family sold portions of the land. She is now occupying the land of Patrick Kisaka, Moses Kisaka Simiyu and Francis Sibuko which acts have denied the said persons occupation of their respective land. The objector should be restrained from such activity.
8. Alice filed a response to the mode of distribution suggested by the petitioner in her affidavit dated 2.5.2019. She avers that land parcel No. 36 comprises 16.3 acres, however, the petitioner's proposed mode of distribution exceeds 20 acres. She is aware that the clan sat and distributed the sharing of each house as per the list of distribution as follows; 1st house 6.3 acres, 2nd house 4.3 acres, 3rd house 2.3 acres, and 4th house 3.3 acres. She is aware that the petitioner has not challenged the award of Ndivisi land disputes adopted in Webuye Ltd No.8 of 2011 where she was awarded 3.4 acres of land as the 4th widow. The petitioner has included a stranger Bonface Sifuma Wafula as a beneficiary and has given him 5 acres of land yet he is not a family member. The petitioner wants the court to believe that only the sons are entitled to inherit whereas the law requires that all children of the deceased benefit equally.
9. At the hearing of the application, Alice testified as OW1. She told the court that she wanted the court to divide the estate among the houses as follows: The 1st house should get 6.3 acres, the 2nd house 4.3 acres, the 3rd house 2.3 acres, and the 4th house to get 3.3 acres. She testified that the petitioner proposed to give every widow 0.1 acres and her son 1.6 acres. Alice explained that she has 7 children, 6 daughters and 1 son. She rejected the petitioner's mode of distribution.
10. James Simwero (OW2) testified that the deceased was his cousin and he died in 2004. In 2002 he invited OW2 and the assistant chief Fredrick Mafali. The petitioner was not present but Richard Basike was present. The deceased wanted the property to be divided amongst the wives but they did not proceed with subdivision as Richard failed to call his brothers. The deceased later died and the clan subdivided the land without placing boundaries. On cross-examination, he testified that the last house was to get 3.4 acres.



11. The petitioner testified as DW1. He testified that Alice is not the 4th wife of the deceased. He explained that she filed a citation in Webuye Court, No.7 of 2009 seeking permission to file a succession cause to evict the deceased's family. She also filed a case at the tribunal on allegations that she had not been granted land as directed by the elders. He explained that there was no dowry paid for the objector and that the letter by the chief was in error and not binding. On cross-examination, he testified that his father had 3 wives excluding the objector but they have since died. He testified that all the objector's children were not the deceased's children and that Denis was to get land based on the chief's letter. He testified that the children were sired with their nephew Albert.
12. Alfred Makokha (DW1) adopted his witness statement filed in court on 9.5.2022. He testified that he has been the clan Chairman since 2021 and knows Alice who attended the deceased's burial and was recognised as a wife. The deceased had children with Alice and he knew all the children. He testified that Alice did not get any other child after the death of the deceased. He testified that there was a case in court where Alice was awarded 3 ½ acres.

Submissions

13. The objector in her submissions identified the following issues:
 - I. Whether the objector is a widow under the Law of Succession Cap 160 and whether the rights of daughters of the objector are entitled to inherit from their father equally as sons.
 - II. Whether the proposed distribution of the estate by the petitioner ought to be adopted as proposed by the petitioner.
14. On the first issue, it was submitted that the deceased died intestate and was a polygamous man and the applicable law should be section 40 of the *Law of Succession Act*. The mode of distribution proposed by the petitioner does not meet the legal requirements as provided under section 40 of the Law of Succession. If the mode of distribution were to be adopted, it would result in manifest discrimination contrary to section 27 of *the Constitution* 2010 which expressly prohibits discrimination. She referred to the case of *Eliseus Mbura Mithara v Harriet Ciambaka & Another* 2012 eKLR and *Mwongera Mugambi Rinturi & Another v Josephine Kaarika & 20 Others* 2015 eKLR. She further submitted that the petitioner admitted that the deceased was polygamous and the objector was the only surviving widow. She submits that the objector as the surviving widow has a life interest in the deceased's estate.
15. The petitioner in his submissions dated 8/11/2023 argued that the objector's allegations are not tenable as she seeks what doesn't exist. She argues that the land is nor than 16.3 acres without any evidence. She has not singled out any beneficiary receiving more than the other or any person in the petitioner's list who is not a beneficiary. The objection is as a result of the greed by the objector.

ANALYSIS AND DETERMINATION

16. I have considered the pleadings filed before the court, the evidence on record, submissions by the parties, and the law as per the *Law of Succession Act* Chapter 160 (the Act). The only issue raised in the application dated 18/2/2016 is whether the grant issued to the petitioner was obtained fraudulently and by concealment of material particulars. The circumstances in which a grant can be revoked are enumerated under section 76 of the *Law of Succession Act* and highlighted by the court In the Matter of the Estate of L.A.K. (Deceased) [2014] eKLR as follows:

“Revocation of grants is governed by Section 76 of the *Law of Succession Act*. The relevant portions of Section 76 are paragraphs (a), (b) and (c) since the issues raised relate to the process of the making of a grant. A grant may be revoked where the proceedings leading



up to its making were defective, or were attended by fraud and concealment of important matter, or was obtained by an untrue allegation of a fact essential to the point.”

17. The law providing for revocation grants is section 76 of the *Law of Succession Act*, Cap 160 of the Laws of Kenya. It provides as follows: -

76. Revocation or annulment of grant

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—

- (a) That the proceedings to obtain the grant were defective in substance;
- (b) 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;
- (c) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) That the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - i) To apply for confirmation of the grant within one year from the date thereof, or such longer period as the Court order or allow: or
 - ii) To proceed diligently with the administration of the estate; or
 - iii) To produce to the Court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) That the grant has become useless and inoperative through subsequent circumstances.

18. The objector alleged that she and her children had been left out of the petitioner’s mode of distribution. Did the petitioner identify all of the deceased’s children in his petition? The petitioner conceded that indeed the deceased had 26 children. According to the petitioner’s affidavit and his proposed mode of distribution, it is evident that the petitioner does not recognize all the 26 children of the deceased. The objector gave evidence that the deceased’s beneficiaries are follows:

1st House

- i. Berita Nakumicha (Widow)
- ii. Hudson Wanyonyi
- iii. Justus Simiyu
- iv. Francis Sibukho
- v. Maurice Wandala
- vi. Patrick Kisaka
- vii. Nora Naliaka
- viii. Ruth Nelima



- ix. Joina Nafula
- x. Nasimiyu Wangoliko

2nd House

- i. Leah Kasima (Widow)
- ii. Richard Busiyile Wangoliko
- iii. Wycliffe Kisiang'ani
- iv. Alfred Lumbasi
- v. Florence Kisaka
- vi. Alice Nasimiyu
- vii. Jackline Nelima

3rd House

- i. Zipporah Wangoliko
- ii. Joseph Murumba

4th House

- i. Alice Nafula Kiminini
- ii. Denis Masai
- iii. Mitrine Nambuye
- iv. Mildred Wangoliko
- v. Raso Nasambu
- vi. Rhoda Wangoliko
- vii. Robai Wangoliko
- viii. Elizabeth Wangoliko

19. I have carefully considered the affidavit in support of the petition and it is clear that the petitioner did not list the deceased's daughters as beneficiaries. In *Re Estate of Solomon Ngatia Kariuki (deceased)* (2008) eKLR the court stated that:

'The *Law of Succession Act* does not discriminate between the female and male children or married or unmarried daughters of the deceased person when it comes to the distribution of his estate. All children of the deceased are entitled to stake a claim to the deceased's estate. In seeking to disinherit the protestor under the guise that the protestor was married, her father, brothers and sisters were purportedly invoking a facet of an old Kikuyu Customary Law. Like most other customary laws in this country they are always biased against women and indeed they tend to bar married daughters from inheriting their father's estate. The justification for this rather archaic and primitive customary law demand appears to be that such married daughters should forego their father's inheritance because they are likely to enjoy inheritance of their husband's side of the family.'



20. In this case, the objector has demonstrated that the petitioner deliberately left out the deceased's daughters in his petition.
21. The petitioner also testified that the objector was not the wife of the deceased however, in his affidavit sworn in support of the petition, he acknowledges Alice as a wife. The letter from the chief attached to his affidavit also acknowledges Alice as the deceased's wife. Interestingly, the petitioner's witness Dw2 testified that Alice was married to the deceased and that her children were those of the deceased. Therefore, the allegation by the petitioner that Alice was not the deceased's wife is without merit.
22. From the foregoing, it is evident that the petitioner concealed from the court that the deceased had 26 children which was material to this cause. I therefore find that the objector has made a proper case for revocation of the grant.
23. I also note that the acreage of the deceased's property, Land Title No. Ndivisi/Mihuu/36 is not clear to the parties. However, according to the report by the Bungoma County Surveyor, Mathew Nandi Khama dated 5/3/2021 the property measures approximately 16.1 acres.
24. In conclusion, I revoke the letter of grant of administration issued to Hudson Sifuna Wafula Busiyile. I appoint Hudson Sifuna Wafula Busiyile and Alice Nafula Kiminini joint administrators of the deceased's estate and a grant of letters of administration intestate shall issue to them accordingly. Having identified all the deceased's beneficiaries and the measurement of Land Title No. Ndivisi/Mihuu/36, the administrators jointly or any one of them shall apply for confirmation of the grant within 30 days from the date of this Ruling.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 1ST DAY OF AUGUST 2024

R.E. OUGO

JUDGE

In the presence of:

Mr. Sichangi -For thePetitioner

Alice Nafula /Objector -Absent

Wilkister -C/A

