



In re Estate of Wini Chiku Mbotela (Deceased) (Succession Cause 14 of 2018) [2024] KEHC 9357 (KLR) (1 August 2024) (Ruling)

Neutral citation: [2024] KEHC 9357 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
SUCCESSION CAUSE 14 OF 2018**

SM GITHINJI, J

AUGUST 1, 2024

IN THE MATTER OF THE ESTATE OF WINI CHIKU MBOTELA (DECEASED)

BETWEEN

DAVID PATO MBOTELA APPLICANT

AND

ARTHUR H. BUKI (SUED AS EXECUTOR OF THE ESTATE OF WINI CHIKU MBOTELA) RESPONDENT

RULING

1. For determination is the Summons for Revocation of grant dated 3rd March, 2023 seeking the following orders;
 1. That the grant of probate of letters of administration to Arthur Hill Buki be revoked.
 2. That the said Arthur Hill Buki does give an account of how far the estate has been administered and the current standing of the estate of the deceased.
 3. That this Honourable Court do make an appropriate order for the preservation of the estate of the deceased Wini Chiku Mbotela.
 4. That costs of this application be provided for.
2. The application is supported by the grounds on the face of it and the supporting affidavit of David Pato Mbotela sworn on the same day. He asserted that the deceased was her grandmother who passed away on 5th December, 2017 and that upon her demise, there was a will from the Respondent in which the Respondent was appointed executor.
3. He also asserted that the said will was not made by his grandmother as according to him, she was illiterate and lived in Kilifi where she died. He contended that the will is fake and aims at unlawfully



enriching his uncle and aunt, Mr. and Mrs. Charles Mbotela. Further, that there did not exist any special circumstances warranting the discrimination.

4. In Response, the Respondent filed a Replying Affidavit sworn by Arthur Hill Buki on the 6th day of July, 2023. He deposed that the applicant, David Pato Mbotela is the son of Emmanuel Mbotela who is a beneficiary of the estate of the deceased herein. He also deposed that the deceased indeed left a will dated 23rd December, 2014 that was executed before two witnesses Stephen Thuku Kabebe and Kazungu Ushuru. That in the said will, he was appointed the Executor and upon the passing of the deceased, he opened it and read out the contents of the will to all beneficiaries.
5. According to him, the deceased was literate and very articulate, that she instructed an advocate to prepare the will which was sent to her in Mtwapa where she executed it in the presence of two witnesses. That before she passed on, she called him to her residence in Mtwapa where she advised him that she had prepared her last will and appointed him as the executor of the said will. He also asserted that the said Charles Deric Mbotela mentioned at paragraph 5 and 7 of the Supporting Affidavit was deceased at the time of preparing the will. Further, that the applicant herein was not provided for in the will of the deceased as his father (Emmanuel Mbotela) was provided for as a beneficiary.
6. Both Stephen Thuku Kabebe and Kazungu Ushuru swore affidavits on 6th July, 2023. Both of them deposed that on 24th December, 2014, they both went to the deceased house in Mtwapa as she had requested them to be present as witnesses when she was signing her last will. Both of them stated that the deceased requested that the contents of her will be read out aloud by Arthur Buki in their presence. According to them, Arthur Buki read out the contents of the said will and she confirmed that those were her last wishes, that she proceeded to write her name on all the four pages of the will and affixed her thumb print. That both of them signed and the envelop was then handed to the Executor for safe custody.
7. Both parties filed submissions with the applicant filing his submissions on the 7th day of December, 2023 and the Respondent filing his on the 9th day of November, 2023.
8. In my view, the only issue for determination is whether the applicant has met the threshold for revocation or annulment of the grant of probate.

Analysis and Determination

9. The applicant contends that the will in question was not made by his grandmother and according to him, she was illiterate and lived in Kilifi where she died. He contended that the will is fake and aims at unlawfully enriching his uncle and aunt, Mr. and Mrs. Charles Mbotela. Further, that there did not exist any special circumstances warranting the discrimination. The Respondents on the other hand asserted that the deceased left a will dated 23rd December, 2014 that was executed before two witnesses Stephen Thuku Kabebe and Kazungu Ushuru. That in the said will, he was appointed the Executor and upon the passing of the deceased, the Executor opened it and read out the contents of the will to all beneficiaries.
10. Under Section 76 of the *Law of Succession Act* Cap 160, it is provided; -

“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...

11. I am guided by the decision of the court in this area of Law in *Matheka and Another V Matheka* (2005) EA 251 it is clearly stated as follows:

“A grant may be revoked either by application or by an interested party or on the courts own motion. Even when revocation is by the court upon its own of motion, there must be evidence that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making a false statement or by concealment of something material to the case or that the grant was obtained by means of untrue allegations of facts essential in point of Law or that the person named has failed to apply for Confirmation or to proceed diligently with the administration of the estate. The grant may also be revoked if it can be shown to the court that the person to which the grant has been issued has failed to produce to the court such inventory or account of administration as may be required”

12. I have perused the affidavit in support of petition for letters of administration testate and under paragraph 3 thereof, the applicant’s father Emmanuel Mbotela was listed as a beneficiary. I am also convinced by the sworn affidavits of the witnesses as to the events of the 23rd December, 2014 at the deceased’s residence. In my view, the applicant has only alluded to the will having being made under suspicious circumstances but the same has not been substantiated. The allegation of fraud has also not been proved by the applicant who in the circumstances is not a beneficiary of the estate of the deceased as he can only inherit through his father. In the analysis above, I make the finding that the applicant has not satisfied the provisions of Section 76 of the *Law of Succession Act* and has also not made a case for the success of the application dated 3rd March, 2023 and the same ought to be dismissed. It’s hereby dismissed with costs to the Respondent.

RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 1ST DAY OF AUGUST, 2024.

.....

S.M. GITHINJI

JUDGE

In the Absence of; -

Mr Mulei for the Applicant.

Miss Kabole for the Respondent.

