



**Munyasya v Munyasya (Civil Appeal E029 of 2022)
[2024] KEHC 10705 (KLR) (16 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 10705 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
CIVIL APPEAL E029 OF 2022**

**FR OLEL, J
SEPTEMBER 16, 2024**

BETWEEN

ERASTUS MBUTU MUNYASYA APPELLANT

AND

FRANCIS MUSEMBI MUNYASYA RESPONDENT

*(Being an Appeal from the decision of the Mwingi Chief Magistrate
court before the Honorable MWANGI KARIMI MWANGI (CM)
dated 8th day of June 2022 in Succession cause No 49 of 2016.)*

JUDGMENT

A. Introduction.

1. The Appellant Who was the objector in the primary proceedings has filed this Appeal against the ruling of Honourable M.K. Mwangi chief Magistrate dated 21st June 2024, where he dismissed the Appellants objection to the mode of distribution of the Estate as filed and proceeded to confirm the summons for confirmation of grant dated 29.03 2021, with no orders as to costs.
2. The Appellant had earlier filed two separate objections to issuance of the grant. As regards the first objection, the same was heard and on 11th August 2021, the court observed that the said objection filed was irregular and could not stand. The Appellant was advised to file a proper objection. Subsequently the Appellant filed the second objection dated 20th December 2021, to which the respondent filed a preliminary objection dated 23rd February 2022. The said preliminary objection was heard and upheld vide a ruling dated 13th April 2022, where in the obiter, the court directed the Appellant to consider seeking for revocation of grant rather than objecting to the making of the grant which had been long issued.



3. The respondent did set down his summons for confirmation of grant for hearing on 25.05.2022 and on the said dated, the appellant appeared before the trial Magistrate, and made oral representation/objection as regards the mode of distribution and a ruling reserved for 08.06.2022. The said ruling was later delivered on 21.06.2022, and the Appellant being dissatisfied by the said ruling filed this Appeal and raised the following ground of Appeal;
 - a. That the learned Magistrate erred in law and fact by failing to consider the appellants objection to the succession cause No 49 of 2016 and the submissions Apparent.
 - b. That the learned trial Magistrate erred in law and facts by failing to consider that the deceased had three wives who succeeded him and had severally made decisions on the distribution of his estate.
 - c. That the learned Magistrate erred in law and facts by not considering that the land parcel mentioned were not surveyed and have no proper measurements.
 - d. That the learned trial Magistrate erred in law and facts when he failed to understand that when the objection raised there were some items and information left out of the deceased estate.
 - e. That the learned trial Magistrate erred in law and fact by not considering that there was a decision by clan members who awarded the land parcel No Mwingi/Mbondoni/1614 to the Appellant's mother and it should not be distributed.
 - f. That the learned trial Magistrate erred in law and facts by not considering and following up the filings already supplied by the Appellant tot the court which showed that land parcel No Mwingi/Mbondoni/1634 had already been awarded to the appellants mother by the clan.
 - g. That the learned trial Magistrate erred in law and facts by not following up the evidence of the objection as presented by the Appellant/objector.
4. The Appellant urged the court to allow this Appeal, set aside the ruling of the trial Magistrate. He also prayed to be awarded the costs of this Appeal.

B. The Appeal

5. This court has examined the Record of Appeal, the grounds of appeal and given due consideration to the submissions by the respondent's counsel. This being a first appeal, this court has the duty to analyze and re-examine the evidence adduced in the lower court and reach its own conclusions but always bearing in mind that it neither saw nor heard the witnesses testify and make allowance for the said fact. In *Abok James Odera T/A. A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR, the court stated as follows-

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”
6. I have considered the grounds of Appeal raised, and do find that this Appeal lacks merit. Both objections filed by the Appellant were considered on merit by the trial Magistrate and determination made. The Appellant did not Appeal as against the said rulings and therefore cannot be heard to still complain about the same. Secondly under Rule 40(6) of the probate and Administration Rules, the Appellant was obliged to file an affidavit of protest to confirmation of grant. He failed to do so but still was allowed to make oral submissions. He claimed before the trial Magistrate that there were several



“shamba’s” he had been given as the only son of the deceased. The trial court did consider the same and rightly rejected it for the simple reason that no proof had been provided to support the said allegations. This finding is correct and cannot be faulted.

7. Further, the trial Magistrate also rightly noted that thirteen (13) beneficiaries of the estate had supported the mode of distribution as proposed and it was only the Appellant who was a lone ranger. All beneficiaries’ as children of the deceased ranked in equal priority and the Appellant did not have any superior claim over the said estate. Finally, the Appellant did not also prove that land parcel Mwingi/mbondoni/1634 exclusively belonged to his mother and/or had been bequeathed to her during the lifetime of the deceased.

C. Disposition

8. The upshot having considered the background facts relating to this Appeal and the grounds of Appeal as raised, I do find that this Appeal wholly lacks merit and dismiss the same with no orders as to costs due to the fact that the parties are family members.
9. It is so ordered.

JUDGMENT WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 16TH DAY OF SEPTEMBER, 2024.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the virtual platform, Team this 16th day of September, 2024.

In the presence of: -

No appearance for Appellant

Mr. Mwathe for Respondent

Susan/Sam Court Assistant

