



**Anindo (On behalf of the Estate of the Late Duncan Otieno Anindo Oluoch) & another v Mitula (Civil Suit 12 of 2019) [2024] KEHC 14324 (KLR) (Civ) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 14324 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL SUIT 12 OF 2019**

**HK CHEMITEI, J**

**OCTOBER 24, 2024**

**BETWEEN**

**DEAN ODHIAMBO ANINDO (ON BEHALF OF THE ESTATE OF THE LATE DUNCAN OTIENO ANINDO OLUOCH) ..... PETITIONER**

**AND**

**LYDIA NAMUGAYI ..... APPLICANT**

**AND**

**LEAH AKETCH MITULA ..... RESPONDENT**

**RULING**

1. The late Duncan Oluoch filed this suit against the Respondent Leah Akech Mitula seeking orders that the matrimonial property they acquired prior to their marriage being dissolved be determined and shared out.
2. The Respondent as well filed her own similar suit which later the court consolidated into this one suit.
3. Unfortunately, Duncan passed on and the Applicant, his son, together with the deceased wife Lydia Namugayi sought out letters of administration which they obtained on 21<sup>st</sup> June 2024.
4. They thereafter filed the application dated 28<sup>th</sup> May 2024 seeking orders that:
  - (a) Leave be granted to substitute the name of the deceased Respondent Duncan Otieno Anindo with the administrators Dean Odhiambo Anindo and Lydia Namugayi.
  - (b) Leave be and is hereby granted to the parties to amend the originating summons accordingly, both in this suit and HCCC72 of 2019



5. The Applicant's supporting affidavits claim that in the interest of justice and for a better approach to the issues raised in this summons it is imperative that after the death of their father and husband it is necessary that they come on record so as to defend the cause that he had begun.
6. That some of the properties were registered in the deceased name and others in their joint names and therefore the Respondent had some rights in the properties acquired before they divorced in May 2019 based on each one's contribution.
7. The Respondent has opposed the application vide her replying affidavit sworn on 15<sup>th</sup> July 2024 where she has inter alia deponed that the Matrimonial Causes Act did not anticipate a situation where the Matrimonial Property of a deceased person would be dealt with within the same Act. In other words, once a person passes on then the suit abates and the Succession Act thereafter takes its cause.
8. She deponed that the Applicant would want to argue the matter through the backdoor so to speak as the same ought to be sorted out under Cap 160. She wondered for example how the administrators will defend the question of how the deceased and her acquired the properties in their 30 years of marriage.
9. She went on to state that the second Applicant was married hardly two years after the divorce and save for two children the rest were not sired by the deceased.
10. She thus prayed that the matter be determined according to Cap 160 which was a proper forum for determining an estate of a deceased person.
11. The court directed the parties to file written submission which they complied. The court has perused the same extensively together with the cited authorities.

#### **Analysis and determination.**

12. It is not in dispute that the deceased was married to the Respondent and they both filed the two summons which were later consolidated. The properties mentioned in their suits were obtained during the coverture. They are either jointly registered or are separately registered.
13. Unfortunately, it was not possible for the deceased to render such evidence before this court so as to explain how each of them acquired the properties. That position remained with the Respondent.
14. I doubt whether the Applicants would be in a position to explain how the deceased acquired the properties either registered in his name or both him and the Respondent.
15. The second Respondent, in particular seemed to have come into the scene two years after the deceased divorced the Respondent. The 1<sup>st</sup> Applicant was the deceased son. Clearly even if the court was to allow the application, I agree with the Respondent's view that they may not be of much help.
16. More importantly the Matrimonial Causes Act did not in my view anticipate that the estate of an Applicant shall be dealt with outside Cap 160. The same presupposed that it only dealt with living beings, namely, recently divorced persons. Once they are deceased then the provisions of Cap 160 kicks in.
17. The drafters of the Matrimonial Causes Act would have clearly spelt out a situation where one of the former spouses passes on while the cause was still pending like the case at hand. Nothing was difficult as in my view they were conscious of Cap 160.
18. The Succession Act is indeed very elaborate. Section 29 for instance covers a wide range of beneficiaries who includes the Respondent as well as the Applicants. The same also deals with the properties



registered in the name of the deceased only. In the event that the Applicants have a contrary view then they have the right to agitate under the said Act.

19. On the same note, the Respondent will be able to clarify if the contested properties belonged to her alone and not the deceased. All that the court is pointing at is the fact that Cap 160 is so wide that one does not need to import the Matrimonial Cause Act. The latter is only meant for the living persons.
20. I think I have stated much to show that I do not find any merit in the application. Nothing is lost to the parties. Let them take the battle to the Succession Court.
21. The application is disallowed with no orders as to costs.

**DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 24<sup>TH</sup> DAY OF OCTOBER 2024.**

**H K CHEMITEI**

**JUDGE**

