



**In re Estate of Angoli Chivolo (Deceased) (Succession Cause  
502 of 2007) [2023] KEHC 18394 (KLR) (2 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18394 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 502 OF 2007**

**WM MUSYOKA, J**

**JUNE 2, 2023**

**IN THE MATTER OF THE ESTATE OF ANGOLI CHIVOLO (DECEASED)**

**RULING**

1. The application for determination is dated December 5, 2016. It is brought at the instance of Agnes Munyasa Yoakim, who I shall refer hereto as the applicant. It seeks revocation of the grant herein, and the inclusion of the applicant in the schedule of beneficiaries, and allocation of a share in the estate. She asserts to be a daughter of the deceased, who had been omitted in the process. She explains that the deceased had 2 wives: Beneta Sichete and Teresina Chibolo. Benedeta had 4 children, but the ones currently alive are the applicant and Musa Anganyo Angoli. Teresina had 5 children, and those alive currently are Florence Nyakoa Muyekho and Agatha Angoli. The only son of Teresina is said to have been the late Charles Mwanzi, who was survived by his only son, Rasters Angoli. She avers that when the estate of her father was distributed, she was left out. she states that Florence Nyakoa Muyekho was married, and the share allocated to her should be shared equally with her, as the 2 of them were the only daughters of the deceased still alive. Then she says that Florence Nyakoa Muyekho should get her share from Rasters Angoli, while she, the applicant should get hers from Musa Anganyo Angoli. She says that she was not involved at all in the succession proceedings.
2. There is a reply to the application, Florence Nyakoa Muyekho, vide an affidavit sworn on May 12, 2021. I shall refer to her hereafter as the respondent. She asserts that she was a daughter of the deceased, through his only wife, Teresina Chibole. She states that the applicant was a child of Clement Mulambala, with Bernetta Shichete Shinyula. She explains that the mother of the applicant had been married to the deceased, but they separated in 1943, and she thereafter married Clement Mulambala, and begat the applicant. She asserts that the applicant had not, throughout her live, depended on the deceased, for her own father and mother took care of her. She asserts that the applicant is not entitled to a share in the estate of the deceased.
3. The application was disposed of orally. The oral hearings commenced on January 27, 2022. The first on the stand was the applicant. She asserted that the deceased was her father, and that she was not given land, when the estate was distributed. She pleaded for 2 acres. She said that the deceased was assisting



- her during his lifetime. She asserted that Clement Mulambala was not her father, for he married her mother when she was 3 years old.
4. Chivolo Murunga testified next. he was a relative of the deceased. he stated that the deceased had given his land out to his wives. The land was shared equally between the 2 wives.
  5. The respondent testified on May 17, 2022. She explained that the deceased had 2 wives, Chisete and Teresina in that order. The first wife had only one child with the deceased, Musa Onyango; while the second wife had 5. She stated that the applicant was a child of the first wife, but not a child of the deceased. She asserted that her father was Clement. She stated that when the mother of the applicant died, she was buried at Lubao, on land belonging to Clement, as he had married her. She stated that Musa Onyango was brought back by the mother of the applicant, and the mother of the respondent raised him.
  6. Musa Onganyo Angoli testified next. he said that the applicant was his sister, and that she was raised at his home by their mother. Then again said she was raised by his father, and lived with him. He said that his mother disagreed with his father, they separated, she went back to her parents, and she later came back. He said that she was buried on the property of the deceased.
  7. David Mukonyole Yeswa followed. He was a relative of the parties. He stated that the applicant was a child of the deceased, and that there were other children, who died young. He asserted that the applicant was raised by her mother and the deceased he stated that when the deceased died in 1974, the mother of the applicant was still married to her.
  8. The only issue here is whether the applicant was a child of the deceased. If she was, then the initiation of these proceedings, excluding her, rendered them defective and marred by misrepresentation and falsehood, and the grant would be liable to revocation, under section 76 of the [Law of Succession Act](#), Cap 160, Laws of Kenya. If she was not a child of the deceased, then the status quo should obtain.
  9. So, was the applicant a child of the deceased? She asserts that she was. The respondent says she was not. The respondent mentions that her father was a Clement Mulambala, who married her mother after she fell out with the deceased, asserting that she was born after that remarriage. On her part, the applicant concedes that her mother was married to the said Clement Mulambala, but then says that she was already born by then, and was a child of the deceased. Her brother, the administrator herein, Musa Onganyo, denies that marriage, and says that their mother raised her at the home of the deceased. Of course, Musa cannot possibly be telling the truth, if the applicant herself is conceding to that marriage. This is her application, and to Musa's. He must have some sinister motive for doing so.
  10. I have these 2 conflicting versions. Which one should be live, the applicant's or the respondent's? I am inclined to believe the respondent. If indeed the applicant was a child of the deceased, the Musa, her blood brother, when he sought representation to the estate of the deceased in 2007, should have disclosed her as such. When the respondent filed a summons for revocation of the grant, in 2010, on grounds that Musa had left her out, yet she was a child of the deceased, Musa filed a response, through an affidavit of sworn on February 16, 2011. In that replying affidavit, he did not identify the applicant as a child of the deceased. The persons that he identified as such were himself, the respondent, Mwanzi Angoli, Ayeko, Iteveta and Agata. The name of the applicant did not come up. When he sought confirmation of his grant, the 2 affidavits that he swore in support of that application made no reference to the applicant at all. The application was dated November 28, 2008, and his affidavits were sworn on November 28, 2008 and August 5, 2011. The application, dated November 28, 2008, was heard orally, Musa testified, and in his testimony, he did not mention the applicant as a child of the deceased, and he did not advocate for her to get a share in the estate. So, it should be taken with a pinch of salt, the narrative that Musa is now giving, that the applicant was a child of the deceased,



who should get a share in the estate, when he, as administrator, never made any provision for her, even after the respondent stormed into the matter to assert her right. The position he is now taking is an afterthought, for it would appear that he had accepted the position that his sister, from his own mother, was fathered by someone else, and did not have legitimate claim to the estate herein. At this day and age, there are scientific ways of establishing paternity, the oral narrative is no longer reliable, the applicant ought to have availed herself of the modern ways.

11. In view of the above, I find no merit whatsoever, in the application, dated December 5, 2016, and I hereby dismiss it. It is a family matter, so each party shall bear their own costs.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 2<sup>ND</sup> DAY OF JUNE, 2023**

**WM MUSYOKA**

**JUDGE**

**Mr Erick Zalo, Court Assistant.**

**Appearances**

**Mr Manyoni, instructed by Momanyi Manyoni & Company, Advocates for the applicant.**

**Mr K'Ombwayo, instructed by M. Kiveu, Advocates for the respondent.**

**Mr Matete, instructed by Matete Mwelese & Company, Advocates for the petitioner.**

