



**In re Estate of Peter Matalandalwa Yambasa alias Petero Madarandalwa Yambasa (Deceased)
(Succession Cause 788 of 2013) [2023] KEHC 19974 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19974 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 788 OF 2013
SC CHIRCHIR, J
JULY 13, 2023**

**IN THE MATER OF THE ESTATE OF PETER MATALANDALWA
YAMBASA ALIAS PETERO MADARANDALWA YAMBASA (DECEASED)**

BETWEEN

MERCYLINE MMITSI MUSEBE APPLICANT

AND

ERNEST KEMBU YAMBASA RESPONDENT

RULING

1. The summons dated 25.7.2022 substantially seek for the annulment of the Grant in this cause. It also seeks for a declaration that the Applicant is entitled to all or a portion a land parcel going by the Title No. North Marachi/Kegondi/2393, and finally, it seeks for an order of re-distribution of the Estate taking into account the interest of the Applicant as the only surviving child of the deceased.
2. It is supported by the annexed affidavit of the applicant as well as the grounds appearing on the face of the application

Applicant's Case

3. It is the Applicant's case that she is the daughter of Peter Matalandalwa Yambasa (Deceased), whose estate is the subject matter of these proceedings.
4. She states that the Application for letters of Administration intestate as well as the subsequent confirmation were done without her knowledge; that she is the only surviving child of the deceased and the petitioner, who is her uncle, failed to disclose this fact to the court.
5. That as the child of the deceased, she should be given the first priority to administer the Estate.



6. She further states that the grant was therefore procured fraudulently as the rightful beneficiaries were not involved.

Respondent's case.

7. The application is opposed by the respondent/Administrator. It is the respondent's case that the deceased who was his biological brother was not survived by any child. That the applicant herein who is personally known to him is the child of the one Clementine MMitsi Musebe who is deceased and Late Teresia Isigi. He has attached an official search from the National Registration Bureau containing the particulars of the Applicant's parents.
8. That the applicant is therefore not a child or beneficiary of the deceased's Estate.
9. The respondent further states that the application has been overtaken by events and the orders sought are not capable of being granted, because the Administration of the Estate has been completed and the Estate properties distributed.

Applicant's Submissions

10. It is the Applicant's submissions that as the only child of the deceased, she is entitled to administer the estate. Reliance is placed on section 38 of the [Law of succession Act](#). That the respondent, as a brother to the deceased ought not to benefit from the estate
11. The Applicant further submits that the respondent has discriminated against her because she is female, and that such an act, constitutes violation of her rights under Article 27 of the [constitution](#).
12. It is finally submitted that the respondent, having concealed the fact that the deceased had a child, the Grant qualifies for revocation or annulment within the context of section 76 of the [law of succession Act](#).
13. Reliance was also placed on the case of [re-estate of Prisca Onyago Nandi \(deceased\)](#)(2020) eKLR which elaborates the grounds for revocation as provided for under section 76 of the [Act](#).

Respondent's submissions

14. The Respondent, while relying on section 107 of the [Evidence Act](#) submits that the burden of proof is imposed on a party alleging the existence of certain facts.
15. It is the respondent's submissions that the applicant has not submitted any proof to show that she is related to the Deceased.
16. It is further pointed out that even the national identity card submitted in evidence does not bear any of the names of the deceased.
17. It is further submitted that on the contrary the respondent has submitted a search from the National Registration Bureau showing that the applicant's parents were Clementine Mmitsi Musebe and Theresia Isigi. That in any event the Applicant did not apply for any paternity test in her attempt to establish her relationship to the deceased.
18. The respondent further submits that proof of dependency is also missing. It is further stated that having failed to establish paternity or any dependency on the deceased, the applicant has no locus standi to seek for the annulment of the grant



Determination

19. I have considered the summons and the affidavit in support, the replying Affidavit and the rival submission of the parties. The issues in this matter are few and fairly straight-forward. They are: -
1. Whether the Applicant is a child of the deceased
 2. Whether the Grant of Letters of Administration should be annulled

Whether the Applicant is a child of the deceased

20. The applicant asserts that she is the only surviving child of the deceased and it ends there. There is no Birth certificate, Birth notification or any document that would help in establishing relationship to the deceased. She has submitted an National Identity card indicating her full name as Merceline Mmtisi Musebe. The deceased herein is Peter Matalandalwa Yambasa. If the Identity card was supposed to suggest some relationship to the Deceased, the card is still not helpful to her because her name as shown on the Identity card has no bearing to that of the Deceased.
21. It is a cardinal principle of law that he who alleges must prove. There is no proof at all that the Applicant was a child or even a dependant of the deceased.
- It is rather indolent of the Applicant to make an allegation and not bother to put any effort in proving it. It is either that, or the Applicant is just being vexatious.
22. It is my finding therefore that the Applicant has failed to prove that she is a child of the deceased or an heir to the Deceased's Estate.

Whether the Grant should be revoked.

23. Section 76 of the *law of succession Act* provides the grounds upon which a grant may be revoked or annulled. One of such grounds, and which the Applicant herein has based her Application on, is if the grant was obtained fraudulently by the making of a false statement or by the concealment of material fact(s). It is the Applicant's case that the respondent concealed a material fact from this court, namely, the fact that the deceased was survived by a child, Applicant herein.
24. It is already my finding that the Applicant has failed to prove any relationship to the deceased, let alone that of being a child of the deceased. To the extent that the Applicant has failed to prove that she was a child of the deceased or that he depended on him, then the respondent cannot be said to have concealed a material fact.
25. In a nutshell, no fraud has been proved so as to warrant the annulment of the Grant.
26. The applicant has therefore failed to prove that there are any grounds for revocation as set out in section 76 of the *Act*. The application is without merit and the same is hereby dismissed.
27. Costs of this Application are awarded to the Respondent

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 13TH DAY OF JULY 2023

S. CHIRCHIR

JUDGE

In the presence of:-



Erick- Court Assistant

Mr. Shifwoka for the Respondent.

No appearance by the Applicant.

