



In re Estate of Hanson Nicholas Charles (Deceased) (Succession Cause 27 of 2017) [2023] KEHC 23702 (KLR) (19 October 2023) (Ruling)

Neutral citation: [2023] KEHC 23702 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
SUCCESSION CAUSE 27 OF 2017
AC MRIMA, J
OCTOBER 19, 2023**

IN THE MATTER OF: THE ESTATE OF HANSON NICHOLAS CHARLES (DECEASED)

BETWEEN

FRANCISCA CHESIRO HANSON & 5 OTHERS APPLICANT

AND

ROBERT NDIEMA HANSON 1ST PETITIONER

IRENE CHEBEN HANSON 2ND PETITIONER

RULING

Introduction:

1. This ruling relates to an application by way of a Summons dated 21st October, 2022. The application was taken out by six daughters of the deceased herein, Hanson Nicholas Charles.
2. The said daughters decry the manner in which they were not provided for in the Will which was prepared by their father unlike their other siblings who are the sons. They contended that even grandsons of their deceased father were catered for, but not themselves.
3. The application was opposed by the Petitioners.

Background:

4. A Grant of Probate of Written Will was issued by this Court on 2nd May, 2018 to the Petitioners herein who were the trustees and executors according to the deceased's written will.
5. The will was later contested. The assault was by one Jane Nabututu Nick who was the second wife of the deceased. She filed a Summons dated 28th September, 2018.



6. The application was taken out pursuant to Rule 73 of the [Probate and Administration Rules](#), Article 27 of the [Constitution](#) and Section 11 of the [Law of Succession Act](#). It sought the following orders: -
 - a. That this honourable court do declare the purported Will of Hanson Nicholas Charles dated 11th July 2014 invalid and unenforceable ab initio.
 - b. That this honourable court do declare that the purported will of Hanson Nicholas Charles dated 11th July 2014 was drafted on suspicious circumstances.
 - c. That this honourable court do declare that the deceased Hanson Nicholas Charles lacked capacity to draft the purported Will dated 11th July 2014.
 - d. That this honourable court do declare that the signatures on the Will be subjected to handwriting expert for examination and authenticity.
 - e. That this honourable court do declare that the purported Will of Hanson Nicholas Charles was not properly sealed.
 - f. That this honourable court do proceed to distribute the estate of the deceased as if the deceased had died intestate.
 - g. That costs of this application be provided for.
7. Given the nature of the above application, it was heard by way of *viva voce* evidence where several witnesses testified including an expert, a Document examiner.
8. By a judgment rendered on 28th October, 2020, the application was dismissed with no orders as to costs.
9. Aggrieved by the outcome, Jane Nabututu Nick, filed a Notice of Appeal dated 9th November, 2020 where she challenged the entire decision.

The Summons Dated 21st October, 2022:

10. The six daughters of the deceased, who are the Applicants herein, filed the instant Summons dated 21st October, 2022.
11. The application was brought under Articles 27 and 159 of the [Constitution](#), Section 26, 27, 28, 29 and 47 of the [Law of Succession Act](#), Rules 45, 49 and 73 of the [Probate and Administration Rules](#) and all other enabling provisions of the law.
12. The application sought the following reliefs: -
 - a. A declaration that the right to equality and freedom from discrimination of Francisca Chesiro Hanson, Caroline Chepkech Hanson, Rebecca Khisa Hanson, Nancy Cherop Hanson, Louise Cheptorus Ng'etich Hanson and Nelly Tengan Hanson has been denied, violated or infringed by the deceased's failure to make provision for them in the will.
 - b. A declaration that Francisca Chesiro Hanson, Caroline Chepkech Hanson, Rebecca Khisa Hanson, Nancy Cherop Hanson, Louise Cheptorus Ng'etich Hanson And Nelly Tengan Hanson being the children of the deceased are entitled to a share of their deceased father's estate.
 - c. An Order that the will of Hanson Nicholas Charles (deceased) be varied to make such reasonable provision for the applicants as dependants of the deceased.



- d. Any other relief or such orders as may be necessary and expedient for the ends of justice or in the circumstances herein.
- e. The costs of this application be provided for.
13. The application was supported by the Affidavit deposed to by Francisca Chesiro Hanson on even date. The Affidavit was sworn with the authority of the rest of the Applicants.
15. The Applicants largely posited that the Will by the deceased went against the grain of the Constitution of Kenya, 2010 and the law since it disinherited them from the deceased's estate.
16. The application was opposed by the Petitioners through their joint Replying Affidavit sworn on 28th November, 2022. The Petitioners contended that the prayers sought could not be properly dealt with in a succession cause, but in a properly instituted Constitutional Petition. They further contended that prayer (c) of the application was *res judicata* by dint of the judgment of the Court rendered on 28th October, 2020 and that the Applicants had filed a Summons dated 1st October, 2021 which was still pending.
17. The Petitioners opposed the allegation that the Applicants were disinherited. They urged that the application be dismissed with costs.
18. The application was heard by way of written submissions. Both parties filed their respective opposing submissions. They also referred to several decisions in support of their positions.

Analysis:

19. The application, the response, the written submissions and the decisions referred to have been carefully considered by this Court.
20. There is a preliminary issue that arise for determination. It is whether the Summons dated 21st October, 2022 is incompetent in view of the reliefs sought.
21. There is no doubt that the application rests on the allegation that the Applicants' right to equality and freedom from discrimination as guaranteed in the Bill of Rights were allegedly infringed, denied and violated by the deceased in not providing for his daughters in the Will.
22. To enable the Courts to appropriately deal with allegations of infringement of the Bill of Rights or the Constitution, The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (hereinafter referred to as 'the Mutunga Rules') were promulgated.
23. Rule 4(1) provides for the manner in which reliefs for any contravention of rights or fundamental freedoms may be accessed. It states as follows: -

Where any right or fundamental freedom provided for in the Constitution is allegedly denied, violated or infringed or threatened, a person so affected or likely to be affected, may make an application to the High Court in accordance to these rules.
24. Rule 10 provides for the Form of Petition. Of necessity, the Petition ought to provide for the following:
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 - (a) the Petitioner's name and address;
 - (b) the facts relied upon;
 - (c) the constitutional provision violated;



- (d) the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;
 - (e) details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;
 - (f) the Petition shall be signed by the Petitioner or the Advocate of the Petitioner; and
 - (g) the relief sought by the petitioner.
25. The Court may also accept an oral application, a letter or any other informal documentation which discloses denial, violation, infringement or threat to a right or fundamental freedom. The oral applications shall, however, be reduced into writing by the Court.
26. The manner in which Constitutional Petitions ought to be presented before Court was discussed by the Supreme Court in *Communications Commission of Kenya & 5 Others v Royal Media Services Limited & 5 Others* [2014] eKLR.
27. Therefore, the manner in which the Applicants presented their grievances in respect of the allegations of infringement of the Bill of Rights in the Summons is not in consonance with the Mutunga Rules.
28. A Succession Court mainly deals with the protection and distribution of estates of deceased persons. The Succession Court cannot deal with areas of contention which are outside the above confines. For instance, where a property is registered in another person's name and it is alleged that the property belongs to a deceased, such cannot be a dispute to be dealt with by a Succession Court. Instead, it ought to be dealt with in another forum until it is determined that the property belongs to the deceased (hence becoming part of the estate of a deceased), then the property reverts to a succession Court for purposes of distribution.
29. Likewise, where rights and fundamental freedoms in the Bill of Rights have to be determined so as to ascertain the constitutionality of a Will, then such determination cannot be undertaken by a Succession Court.
30. It is, hence, the finding of this Court that the Summons, given the nature of the reliefs it sought, was filed in a wrong forum. To that extent, the jurisdiction of this Court, as a succession Court, was wrongly invoked.
31. The Summons lacks any legal leg to stand on and can only be for rejection.
32. Consequently, the Summons dated 21st October, 2022 is a non-starter and is hereby struck out with no order as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KITALE THIS 19TH DAY OF OCTOBER, 2023.

A. C. MRIMA

JUDGE

Ruling No. 2 virtually delivered in the presence of:

Mr. Ingosi, Learned Counsel for the Applicants.

Miss. Munialo, Learned Counsel for the Petitioners.

Regina/Chemutai – Court Assistants.

