



**In re Estate of Bahati Fataki (Deceased) (Succession Cause 38 of 2023)  
[2024] KEHC 13747 (KLR) (6 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13747 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 38 OF 2023  
JRA WANANDA, J  
NOVEMBER 6, 2024  
IN THE MATTER OF THE ESTATE OF BAHATI FATAKI (DECEASED)**

**BETWEEN**

**KAHAMBU MALULE JEANE ..... PETITIONER**

**AND**

**KENDAKENDA KAHINDO MARIE ..... 1<sup>ST</sup> OBJECTOR**

**CALVIN BAHATI KABUNGA ..... 2<sup>ND</sup> OBJECTOR**

**JUDGMENT**

1. The deceased, Bahati Fataki, died on 3/02/2022 aged 66 years old. On 8/03/2023, the Petitioner herein, Kahambu Malule Jeane, claiming as a wife to the deceased, filed an Application to be issued with Letters of Administration over the estate of the deceased. In the Petition, she listed a total of 10 people, including herself and the 2<sup>nd</sup> Objector, Calvin Bahati Kabunga, as survivors of the deceased. 4 parcels of land, 10 motor vehicles and 4 bank accounts were also cited as properties/assets left behind by the deceased and thus estate properties.
2. However, on 28/07/2023, the Objectors, claiming as widow and son, respectively, of the deceased, through Messrs Onyango & Aywa Advocates filed an Answer to the Petition, a Cross-Petition of their own and an Objection to making of the Grant. The Objectors listed their own version of survivors, which comprised of 3 widows (including the Petitioner and the 1<sup>st</sup> Objector) and their children, totalling 14 people. They then alleged that the Petitioner is not a proper person to be granted administration of the estate because she failed and/or neglected to take out Letters of Administration over the estate and was compelled to do so on the motion of the Objectors, that the Petitioner chose to sideline them and other dependents despite prior agreement amongst the 3 households that the Objectors would be part of the administrators, and that she has also shrouded the process in secrecy to her benefit and that of only the 2<sup>nd</sup> household.



3. The Objectors alleged further that there is lack of consent of all the dependents in taking out the Letters of Administration contrary to Rule 7(7)(b) of the Probation and Administration Rules, that the Petitioner deliberately failed to include one of the surviving widows, and that the Petitioner deliberately failed to disclose all assets of the deceased and to provide proper valuation of the assets contrary to Rule 7(1)(e). The Objectors also accused the Petitioner of misappropriating assets belonging to the deceased, that she has no regard to the interest of other dependents and that her conduct is oppressive and discriminatory.
4. The Objection and the Cross-Petition was supported by the respective but identical Affidavits sworn by the Objectors. In the Affidavits, the Objectors listed the 3 households as follows:

Name of Widow	No. of children
1 <sup>st</sup> widow, Bejuniya Nyirarundondo (deceased),	3 (including 2 <sup>nd</sup> Objector)
2 <sup>nd</sup> widow, Kahambu Jeanne Malule (Petitioner)	5
3 <sup>rd</sup> widow, Kendakenda Kahindo Marie (1 <sup>st</sup> Objector)	3

5. The Petitioners deponed that upon the demise of the deceased, the Petitioner failed to take out Letters of Administration over the estate, that the 2<sup>nd</sup> Objector then moved to Court vide Eldoret High Court Citation Cause No. 25 of 2023 for orders compelling the Petitioner to act accordingly, and that it was only after the intervention of the Court that the Petitioner filed the belated Petition herein. The Objectors deponed further that despite prior agreement amongst the 3 houses that the Objectors be part of the administrators, the Petitioner sidelined the other 2 houses, and that the Objectors only came to know of these proceedings when a Notice was gazetted on 30/06/2023. They pleaded further that the Cause herein appears to factor only one household since the Petitioner is from the 2<sup>nd</sup> house and the 2 sureties are the children of the Petitioner, and that as a result of the Petitioner's secrecy, some of the dependents (she listed 5, including themselves) were denied an opportunity to execute the consent. They also contended that upon perusing the Petition, they noted that they were not included as survivors or dependents, that several assets (he listed 3) were not disclosed in the Petition, that sufficient details of the funds held at the 4 bank accounts were not disclosed and also that the Petitioner had not exhibited proper valuation of the assets.
6. The Objectors deponed further that the Petitioner has been wasting the estate, purporting to sell and renting properties to unsuspecting 3<sup>rd</sup> parties and without accounting for the proceeds, while claiming that she is an Administrator. They added that the Petitioner in connivance with one Bahati Bazi Fiston, has also concealed and/or refused to disclose all properties belonging to the deceased, particularly the land parcel Turbo East/Leseru Block 7 (Leseru) 548. They then stated that they are apprehensive that assets forming part of the estate will be intermeddled and wasted by the Petitioner thereby occasioning the beneficiaries irreparable loss and damage. According to the Objectors therefore, the Petitioner's actions have demonstrated that she is not fit to be the Administrator and urged that she should be held accountable for the misappropriation of the estate and be compelled to give proper accounts of rent collected, hiring out of vehicles and funds withdrawn from bank accounts. They also urged that, if granted their prayers, they will faithfully administer the estate.



## Petitioner's Response

7. In response to and in opposing the Cross-Petition, the Petitioner, acting in person, filed Grounds of Opposition and the unnecessarily very lengthy Affidavit running up to 51 paragraphs, both filed on 1/09/2023. Both basically advance the same arguments. I will therefore only recite the contents of the Affidavit.
8. The Petitioner deponed that she is the only surviving widow of the deceased, that the 1<sup>st</sup> Objector, Kendakenda Kahindo Marie, was never married to the deceased but only had an intimacy relationship that resulted in the birth of 3 children, all whom the Petitioner included as beneficiaries. She deponed further that she omitted the 1<sup>st</sup> Objector because she is a stranger who never married the deceased and does not therefore qualify as a spouse. She added that the 1<sup>st</sup> Objector got married to someone else who sired her 2 other children and that the 1<sup>st</sup> Objector continues to cohabit with the said man as her husband to date and that she was not directly dependent on the deceased at the time of his demise. She also contended that the Chief's letter that mentioned the 1<sup>st</sup> Objector as a widow did so with a footnote rider shifting proof of marriage to the Court, that the Chief was unable to comprehend the 1<sup>st</sup> Objector's status and description in the estate hence the rider, and that marriage is a sacrosanct arrangement that cannot be assumed on the basis of children. She deponed further that the 1<sup>st</sup> Objector was never included in the eulogy/funeral programme prepared by the family, among them the 2<sup>nd</sup> Objector, which programme expressly indicated that the deceased was survived by only 1 wife, and that the 1<sup>st</sup> Objector was in attendance but never complained or raised a finger for having been so omitted in the program as a widow.
9. Regarding the other alleged widow, Bejuniya Nyirarundondo, the 2<sup>nd</sup> Objector's mother, the Petitioner deponed that it is true that she was married to the deceased and got 3 children but is now deceased, that the deceased got married to the Petitioner after the demise of the 2<sup>nd</sup> Objector's said mother and that she could not be included since she is deceased and neither could the 2<sup>nd</sup> Objector's other siblings because both are deceased and were not survived. She then deponed that the law does not provide for "houses/households" in distribution of an estate in a polygamous family's setup but each member of the household is treated as a "unit", that the 2<sup>nd</sup> Objector is yet to come to the realization that he cannot replace his deceased mother and siblings as he so envisages and combine their beneficial units to supposedly claim that which would have been their share through "household" distribution.
10. She then denied the allegation that she failed to take out Letters of Administration and that she only did so after being compelled by the Court upon the filing of a Citation Cause. She basically stated that the delay was caused by the need to collect and compile relevant documentation and also by family misunderstandings, that despite her convening a family meeting, which was also attended by extended family members from Congo and which meeting agreed on a harmonious distribution of the estate, the disputes persisted, that one point of dispute was the 2<sup>nd</sup> Objector's claim over the parcel of land known as Turbo East/Leseru Block 7 (Leseru)/548 yet that property does not form part of the estate. She then denied the Objectors' allegations that there was a meeting of the 3 so-called households and pointed out that the Objectors have not produced any minutes, agreements or list of attendees to prove the allegation. She also stated that the 2<sup>nd</sup> Objector was timely contacted by the Petitioner and informed of the intent to file Succession proceedings hence allegations that the same was conducted secretly are not only made in bad faith but also unfounded. She deponed that the 2<sup>nd</sup> Objector declined to sign Form 38 which had him as surety.
11. The Petitioner deponed further that some family members from the 3 respective mothers who are domiciled in Canada and others in Congo were informed and they all gave their consents to filing



- of the Succession Cause without their signatures. She deponed further that the 1<sup>st</sup> Objector was not contacted for the simple reason that she is not a beneficiary to the estate. She further contended that the 2<sup>nd</sup> Objector cannot pretend to have been made aware of the Succession proceedings from the Gazette Notice of 30/06/2023 yet in the Petitioner's response in the Citation that was served on the 2<sup>nd</sup> Objector's Attorneys on 16/03/2023, the Petitioner indicated the Succession Cause number well before the Gazette Notice was published. She urged further that the Objectors have not demonstrated that they have the consents of the other family members and cannot therefore pretend to be speaking on their behalf.
12. Regarding the allegations that the Petitioner has left out other estate properties, she deponed that she had diligently identified all properties known to her and that the Objectors are at liberty to move the Court to introduce other properties that they feel were omitted. Regarding the said property Turbo East/Leseru East Block 7(Leseru)/548, she deponed that the same does not form part of the estate as it is owned by one Bahati Bazi Fiston who legally purchased it from the seller in terms of documents that she exhibited and that the Affidavit exhibited by the Objectors and sworn by one James Cheruiyot Kiplagat is a misrepresentation. Regarding the allegations that she had left out relevant particulars of the respective bank accounts, she deponed that she could not have accessed the same to get the information without a confirmed grant from the Court. Regarding valuation of the properties, she urged that the same comes at a cost which must be borne by the estate, that in any event, the valuation was not a priority because the same were occupied by respective members of the family courtesy of a mutual agreement reached by all in attendance of the family meeting, including the 2<sup>nd</sup> Objector and the son to the 1<sup>st</sup> Objector.
13. The Petitioner then denied the allegation that she has been wasting the estate, and counter-alleged that the 2<sup>nd</sup> Objector has a lorry which has moved to Congo, uses the profit and does not account to anyone. She also deponed that the son of the 1<sup>st</sup> Objector does not also account over the profits he makes from another lorry. She deponed that the two possess the lorries as a result of the aforesaid family mutual agreement and no one is complaining. She contended that she is capable as a spouse who lived with and assisted the deceased to acquire and manage the properties to provide leadership over the estate as she has indeed done by convening the family meeting where the estate was mutually distributed as per the minutes exhibited, that she immediately moved to facilitate the same since she abhorred fighting and/or protracted litigation, that sadly the Objector's goal is to waste the estate on litigation by renegeing on the earlier understanding. She deponed further that the 2<sup>nd</sup> Objector has no leadership qualities to steer the family in the Succession process and his intention is to invite strangers to be part of the beneficiaries and force a re-distribution.
14. She also deponed that no property is at risk of wastage since each beneficiary enjoys that which was given to them as was mutually agreed by all beneficiaries in the family meeting of 10/04/2022. She added that if there is any intermeddling or wastage, then it should be the 2<sup>nd</sup> Objector and the son to the 1<sup>st</sup> Objector to answer since they have moved the said lorries to unknown destinations immediately the Petitioner surrendered the same to them. According to her, the issue of accounting and intermeddling should not arise since the estate had already been mutually distributed save for the monies held in the bank accounts. She deponed further that she will have no problem in admitting the 2<sup>nd</sup> Objector as a co-Administrator.

### **Hearing of the Objection**

15. The matter was then canvassed by way of written Submissions. The Objectors filed their Submissions on 1/03/2024 while the Petitioner filed on 11/04/2024 in person.



## Objectors' Submissions

16. The Objector's Counsel reiterated that the Petition is fatally flawed because the rest of the family members did not authorize the Petitioner to apply for Letters of Administration and that the Petitioner is attempting to defraud other beneficiaries by clandestinely filing the Petition. He urged that on several occasions, the family had been in negotiations on how the 3 households shall administer the estate and that by a unanimous decision, it was decided that the estate shall be administered equally by all households, that rather than honouring the decision, the Petitioner and members of her household elected to only factor their own selfish interest and neglected other households. Counsel also reiterated that some dependents (he listed 6) never signed consents. He cited Section 29(a) of the [Law of Succession Act](#) and also the Chief's letter which mentioned the dependents. He also cited Rule 7 of the Probate and Administration Rules and submitted that although the Petitioner partially adhered to this Rule by mentioning all children, she wilfully neglected to mention the 2<sup>nd</sup> Objector. He also cited Rule 26(2) and invited the Court to peruse P&A Form 38 filed by the Petitioner from which, he submitted, is clear that there is no consent given by the said persons. He also cited the case of *Re Estate of Charles Kipchumba Cheserek (Deceased) [2022] eKLR*. In conclusion, he submitted that the Petitioner did intend to conceal material facts when applying for the Letters of Administration.

## Administrators' Submissions

17. On her part, the Petitioner reiterated that the 1<sup>st</sup> Objector is neither a beneficiary, a dependent or a survivor of the deceased and that the Chief, although he included the 1<sup>st</sup> Objector, inserted a footnote regarding her marital status. She cited Clause 1.1 of the [Law of Succession Act \(Amendment\) Act, No. 11 of 2021](#) that, she submitted, defines a "spouse" to mean "husband and wife/wives recognized under Section 6 of the [Marriage Act](#)". She reiterated that the 1<sup>st</sup> Objector got 3 children with the deceased but however got married elsewhere where she got 2 other children with her current husband whom she still resides to date and thus the reason why she kept her peace when she missed out in the program during the funeral of the deceased. She cited the case of *Nakuru High Court Succession Cause No. 164 of 2010* in which, she submitted, the Judge stated that "having children is not proof of marriage; one must produce evidence to support her position" and that "a former wife must be a wife in a marriage contracted in one of the established systems for contracting a marriage as set out in Sec. 6 of the [marriage Act](#) 2014 from where Clause 3 of the law of succession (amendment) [Act No.11 of 2021](#) derives its limp.....". She added that the section of law relied upon by the Objectors (Section 29(a) of the [Law of Succession Act](#)) was amended and has a new meaning for a "dependent" as far as wife/wives are concerned in matters succession. She submitted that the Petitioner's marriage to the deceased is not controverted and therefore leaves her as the only spouse and only surviving widow.
18. The Petitioner submitted further that there exists no mandatory provision in Succession law for all dependents to sign a Petition for a Grant, that Section 51(1) of the [Law of Succession Act](#) only requires that Petition Forms should be signed by the Applicant and shall include information such as names and addresses of all surviving beneficiaries, that she complied with this Section and included all the survivors save for the 1<sup>st</sup> Objector who did not qualify as a beneficiary. She also cited Section 51(4) of the same Act and submitted that under it, "no omission of any information from an application shall affect the power of the court to entertain the application".
19. The Petitioner contended further that the Objector's inconsistency in their Submissions is wanting, that at one point, they claim that the family had been meeting and had unanimously agreed to file the Succession Cause yet in another, they feign ignorance of any such move. She reiterated that the family, including the 2<sup>nd</sup> Objector, met and agreed on the mode of distribution, that their siblings who reside



out of Kenya were not physically present but were virtually conducted and agreed to the distribution. She also reiterated that although the other family members may not have signed consents, they were in agreement with the Succession Cause and undertook to virtually join Court during confirmation of the Grant, that the 1<sup>st</sup> Petitioner was part and parcel of the agreements and he should not hold the whole family at ransom yet he got and is enjoying a 12 million-worth truck courtesy of the family agreement. She submitted that this Cause was filed after the 2<sup>nd</sup> Objector fell impatient and filed a Citation Cause against the Petitioner based on what he claimed to be inordinate delay and that his change of heart and objecting to the same Cause to have been delayed is an inexplicable malice.

20. In response to the Objector's prayer that the Court invokes Section 76 of the Law of the [Law of Succession Act](#) and revokes or annuls the Grant, the Petitioner submitted that there exists no Grant to be revoked since none has been issued, that the Application is premature, anticipatory and a waste of the Court's time.

### **Determination**

21. As correctly pointed out by the Petitioner, no Grant of Letters of Administration has been issued as yet in this matter. Although the Petition was Gazetted, processing of the Grant stalled as a result of the challenge filed by the Objectors. The issue of Revocation or Annulment of the Grant under the provisions of Section 76 of the [Law of Succession Act](#) does not therefore arise.
22. In the circumstances, the issues that remain for determination can be listed as follows:
- i. In whose name should the pending Grant of Letters of Administration be issued as Administrator(s)?
  - ii. Who are the heirs/beneficiaries of the estate herein and whether the 1<sup>st</sup> Objector is among them as a "widow"?
  - iii. Which properties comprise the estate?
23. From the history of this matter, I note that the 2<sup>nd</sup> Objector had in February 2023 moved to this Court and filed a Citation, namely Eldoret High Court Citation No. E25 of 2023, basically seeking orders that the Petitioner be compelled, within specified timelines, to take out Letters of Administration over the estate herein and that in default, the 2<sup>nd</sup> Objector be permitted to take out the Letters of Administration on his own. In the 2<sup>nd</sup> Objector's Affidavit filed in the Citation, he expressly stated that the Petitioner, as the widow of the deceased, ranks high in the order of priority in applying for Letters of Administration. Perhaps taking cue therefrom, the Petitioner then swiftly moved and filed the Petition herein, barely 1 month later. What I deduce from the above is that all along, the 2<sup>nd</sup> Objector appreciated and recognized the capacity of the Petitioner as the right person to take out the Letters of Administration.
24. The Objectors' contention cannot therefore be about the competence or legal status of the Petitioner to serve as an Administrator. The contention is clearly only in respect to the manner in which the Petitioner allegedly handled the process of filing and prosecuting the Petition. While the Objectors claim that the Petitioner conducted the whole process in secrecy and without involving them as had been agreed in family meetings, the Petitioner, on her part, claims that it is the Objectors who declined to participate in the process, contrary to the agreement reached in the family meetings.
25. While the family is made up of about 10 surviving members, I note that the only people who have signed the consents are about 5 and, incidentally, all are children of the Petitioner (2<sup>nd</sup> house). The 2<sup>nd</sup>



- Objector, the only survivor from the 1<sup>st</sup> house did not sign the consent and neither did the 1<sup>st</sup> Objector or any of her 3 children.
26. The above scenario is not uncommon with polygamous families where, considering the nature and dynamics of such marital arrangements, more often than not, achieving consensus is always a long shot. What the Petitioner ought to have done in the circumstances, was to simply demonstrate, in her Petition, that she had served all concerned family members with the Petition and that despite such service, they have refused to participate therein. To proceed in the manner that she did, without demonstrating that all had been formally notified, was wrong and would form a strong foundation for revoking the Grant had any been issued. However, any transgressions by the Petitioner are mitigated by the fact that she truthfully disclosed and listed all the survivors save for the 1<sup>st</sup> Objector, whom she termed a “stranger”. According to the Petitioner, although the 1<sup>st</sup> Objector got 2 children with the deceased, the two were never united in any marital relationship and the 1<sup>st</sup> Objector cannot therefore qualify to be described as a “widow”. She contended further that the 1<sup>st</sup> Objector moved on and even got married to another man with whom she has 2 other children and with whom she is still married and lives with to date.
27. Be that as it may, rather than struggle to make determinations over the blame game above, which, in any case, will not assist the parties to move forward, I will excuse the Petitioner for any omissions made by her in the manner in which she initiated and prosecuted the Petition herein, and solve the impasse, at this stage, by adding one beneficiary from the side of the Objectors to join the Petitioner as co-Administrators.
28. Regarding the 2<sup>nd</sup> issue, namely, who are the heirs/beneficiaries of the estate of the deceased, I note that while the Petitioner has listed 10 survivors, the Objectors have included the same 10 but added 4 more, to make an aggregate list of 14. A closer look at the two respective lists however reveals that the only major discrepancy is in respect to one person, namely, the 1<sup>st</sup> Objector, Kendanda Kahindo Marie. As already stated hereinabove, while the Objectors have included the 1<sup>st</sup> Objector as a “widow”, the Petitioner has omitted the 1<sup>st</sup> Objector claiming that although she had 2 children with the deceased (whom the Petitioner has included as beneficiaries), the 1<sup>st</sup> Objector was never engaged in any marital relationship with the deceased and that she even got married to another man during the lifetime of the deceased. For this reason, the Petitioner omitted the 1<sup>st</sup> Objector from the list of beneficiaries or survivors.
29. The other 3 family members whose names appear in the Objectors’ list but not in the Petitioner’s list are Bejuniya Nyirarudondo Marie (the 1<sup>st</sup> widow) and her 2 children, Nyarasafar Bahati and Mafene Bahati. All 3 are therefore from the 1<sup>st</sup> house. There is however no dispute that all the 3 predeceased the deceased. In fact, from the evidence on record, the 2<sup>nd</sup> Objector, Calvin Bahati Kabunga, is the only survivor from the 1<sup>st</sup> house. In view thereof, the 3 cannot be referred to “survivors” of the deceased. There is also no allegation that the said Nyarasafar Bahati and Mafene Bahati left behind any spouses or children who could then take over their shares of inheritance. In the circumstances therefore, the Objectors have no basis, in law, for purporting to include the 3 said deceased members of the 1<sup>st</sup> family.
30. There being no dispute on the remaining 10 beneficiaries, therefore, I find and hold the list of beneficiaries presented by the Petitioner and appearing at paragraph 4 of the Affidavit in support of her Petition filed herein on 8/03/2023 is the correct one and I uphold it.
31. In respect to the 1<sup>st</sup> Objector, Kendanda Kahindo Marie, whether she is a “widow” of the deceased and whether she therefore qualifies to be considered in inheritance from the estate, as aforesaid, there have been allegations and counter-allegations over the issue. I find that this being a factual question



and which is crucial to this Court's eventual determination on whether the 1<sup>st</sup> Objector will inherit, it will not be appropriate to make a determination thereon on the mere basis of Affidavit evidence. I therefore direct that the issue be fixed for a viva voce hearing.

32. The above finding also applies to the 3<sup>rd</sup> issue, namely, what properties constitute the estate. In light of the Objectors' allegations that the Petitioner left out some properties, the same shall also be determined after viva voce hearing.

### Final Orders

33. In the end, the I rule and order as follows:

- i. The Grant of Letters of Administration Intestate shall now be issued in the names of the Petitioner (Kahambu Malule Jeane) and the 2<sup>nd</sup> Objector (Calvin Bahati Kabunga) as joint Administrators of the estate of the deceased, Bahati Fataki.
- ii. The following 10 persons are declared to be beneficiaries and/or survivors of the estate of the deceased, Bahati Fataki, and thus entitled to inherit therefrom:

1 <sup>st</sup> House (Widow – Benjuma Nyirarundondo (Deceased))	
Calvin Bahati Kabunga (2 <sup>nd</sup> Objector)	son
2 <sup>nd</sup> House (Widow – Kahambu Jeanne Malule (Petitioner))	
Kahambu Malule Jeanne (Petitioner)	widow
Jimmy Bahati Muhira	son
Erick Timothy Khambale	son
Gizeal Kahindo Bahati	daughter
Bahati Bazi Fiston	son
Rodrique Bahati	son
Children of Kendakenda Kahindo Marie (1 <sup>st</sup> Objector)	
Arsene Bahati Muyemana	son
Rica Bahati Kakuru Siva	daughter
Rita Bahati Kato	daughter

- iii. As regards the 1<sup>st</sup> Objector, Kendakenda Kahindo Marie, her claim that she was the 3<sup>rd</sup> wife of the deceased, Bahati Fataki, and thus a widow entitled to inherit from the estate, a date for



viva voce hearing shall be fixed in which the trial of her said claim shall be conducted before determination of her status.

iv. The issue of the list of properties comprising the estate shall also be canvassed at the same viva voce hearing referred to above, before determination thereof.

v. Costs shall be in the Cause.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 6<sup>TH</sup> DAY OF NOVEMBER 2024**

.....

**WANANDA J.R. ANURO**

**JUDGE**

Delivered in the presence of:

Aywa for Objectors

Petitioner-Respondent, Kahambu Malule Jeane – present, acting in person

Court Assistant: Brian Kimathi

