



REPUBLIC OF KENYA



KENYA LAW
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**Maigua v Maigua (Civil Appeal E032 of 2023)
[2025] KEHC 16063 (KLR) (5 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16063 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL APPEAL E032 OF 2023
PJO OTIENO, J
NOVEMBER 5, 2025**

BETWEEN

ESTHER NYAMBURA MAIGUA APPELLANT

AND

ANN WANJIRU MAIGUA RESPONDENT

JUDGMENT

1. The court has before it for determination an Appeal challenging the entire Ruling in Succession Cause E014 of 2022, delivered by Kitale Chief Magistrate's Court, (Hon. J.K. Ng'arig'ar), on a summons for revocation of grant brought under Section 76 of the *Law of Succession Act*. The summons was lodged by Esther Nyambura Maigua, as an objector and now the Appellant in the appeal.
2. By the summons, the Appellant sought to have the letters of administration which had been granted to Ann Wanjiru Muigua (the Respondent) respecting the Estate of Leonard Kingori Maigua (Deceased) and the Certificate of confirmation of the letters of administration revoked.
3. The deceased died intestate 17th September, 2020. A Grant of Letters of Administration Intestate was issued to the Respondent on April 5, 2022 and subsequently confirmed on July 26, 2022.
4. The Appellant objected to administration by the petition while asserting a claim of being deceased's daughter representing the 'First House' alongside three siblings. Her application for revocation and annulment contended allegations of fraud and procedural impropriety. Its specifically claimed:
 - i. that the Respondent made false statements in the petition;
 - ii. that the Respondent concealed the existence of the true beneficiaries of the First House);
 - iii. that the Respondent concealed material fact about the value of the estate assets, while the appellant asserted that the true value of the estate exceeded Kshs. 20,000,000/=; and, lastly



- iv. that the Respondent failed to disclose the existence of a prior and active superior court process, being Kitale High Court Citation No. 5, E002/2020.
5. In response to the summons, the Respondent filed a Replying Affidavit and maintained that the letters of administration were properly issued and that the Objector had consistently failed to comply with the High Court order in the Kitale High Court Citation No. 5 E002/2020. The directive which she stated required DNA testing for all children said to have been sired by deceased for the purpose of verifying paternity as the indispensable determinative fact in resolving the dispute concerning dependency.
6. The objection was canvassed by way of written submissions. The trial Court upon considering the evidence, confirmed the matter to have been previously subject to active guidance by the mandatory orders from the High Court through the Citation process, that the High Court in Citation No. 5 E002/2020 had indeed directed for DNA testing for all the children alleged to have been sired by deceased for the purpose of verifying paternity and concluded with a holding that the paternity testing was not merely an ancillary issue, but the non-negotiable factor governing the Objector's inclusion in the cause, unequivocally stating that the Objector failed to proceed as per the High Court orders.
7. The consequence of the finding was the determination that the Appellant's place in the succession cause could not be legally ascertained. Consequently, the Court expressed a justified reluctance to disturb the grant already issued and confirmed, and proceeded to dismiss the objection and the underlying application.
8. Aggrieved by the said Ruling, the Appellant lodged an Appeal vide Memorandum of Appeal dated 28th May 2023. The Appeal projects seven grounds which this court, for the purposes of analysis, brevity and determination, condense into two distinct issues. The two issues are; (i) the apparent failure by the Chief Magistrate Court to establish locus standi (Ground 1, 2, 3, 5, 7); and, (ii) the alleged jurisdictional defects concerning the Magistrate's Court, including the sub judice rule and pecuniary competence. (Ground 4 & 6).

Analysis and Determination

9. As a first appellate, the Court is bound by the established legal principle to; re-appraise, re-examine and re-evaluate the entire pleadings evidence, submissions, and conclusions reached by the trial court with a view to making its own independent findings. The mandates for a thorough scrutiny of the lower court's analysis and conclusions must however bear in mind the fact that the trial court is the trier and master of the facts and thus it takes a very strong case for the appellate court to disturb factual findings.
10. With the appreciation that the lower court was presented with an application brought under Section 76 of the *Law of Succession Act*, the starting point must be that the trial court expected of the applicant(s) to demonstrate that they are interested parties whose rights have been prejudiced by the grant. Whenever a party cannot conclusively prove their relationship to the deceased, they inherently fail to meet this threshold. It was thus the duty of the trial court to establish and be convinced that the objector had discharged or failed to discharge the onus of proving their relationship with the deceased as children. If the relationship was established, the next question ought to have been if the petitioner had acted appropriately by failing to disclose the objectors in the petition. That to court is the calling of every court when faced with any application grounded on section 76 *Law of Succession Act*.
11. Here, the court having considered the affidavit evidence adduced before the trial court, narrows down the determination of the Appeal into a sole issue being whether the learned Chief Magistrate erred by dismissing the Appellant's application on the ground that the Appellant failed to comply with a mandatory directive by the High Court that required DNA testing.



12. In its decision, the trial court pen ultimately found and held: -

“I have carefully considered the objection herein vis-à-vis the response.

It is clear that this matter was active by way of citation from the High Court being – Kitale High Court Citation No.5 of 2020. It would appear it was the paternity test that would have determined the inclusion or otherwise of the objector in the absence of any other evidence. The objector failed to proceed as per the High Court orders.

I am not therefore able to determine the place of the Objector in this cause following the above omission. Consequently, I am reluctant to disturb the grant already issued and confirmed. In a nutshell I do dismiss the objection claim and hence dismiss the application dated 18/1/2023 with costs to the Petitioner/Respondent”.

13. The court reads the trial court to be saying that he was dealing with a succession matter that was active in the high court in which the High court had ordered parties to undergo paternity tests. On the basis that the objectors had not submitted themselves to the test, and in the absence of other evidence, the court was unable to determine the place of the objector in the cause.
14. In coming to that conclusion, the court had affidavits by both sides that all children alleging to have been sired by the deceased undergo DNA testing. There was no material to show that the children attributed to deceased and the petitioner were ever tested. Without such evidence, if the order was to be applied uniformly, then all should have suffered the same fate. The ruling in place does not talk of the children of the deceased with the petitioner. The views it to have failed to avail to both sides the benefit of the order and failed to treat all equally. In doing so, the court failed to consider what it ought to have considered thus committing an error of law and principle by failing to determine the dispute presented.
15. That conclusion would be sufficient to dispose of the matter, but there is two critical aspect of the case the court wishes to comment on. It is about the agreed fact that there was a pending cause before the high court in which the petition mentions two families. That petition was exhibited to the court in the affidavit in support of the application for revocation of grant. On its face it discloses the estate to be very expansive including five developed parcels of land within Kitale town, parcels of land measuring about 80 acres besides 7 motor vehicle, motor cycles and money in the bank. Giving the undeveloped land alone a conservative value of 500,000 per acre, that alone outstrips the pecuniary jurisdiction of the court. It is thus apparent to court that the matter exceeded the jurisdiction of the court and thus whatever was undertaken without jurisdiction must not be left to stand but be set aside.
16. Tied to that is the fact that the court proceeded as if it was enforcing the order of the High Court in the Citation Cause Number E002 of 2020 concerning paternity tests. I have read the proceedings in that cause and noted that the Objector was indeed allowed to file a cause for grant of letters of Administration Intestate within 60 days. Both orders were apparently issued in the presence of the petitioner or counsel. The court is concerned that being aware that there were four people claiming interests in the estate, who had disclosed such interests to the court and cited the petitioner, the petitioner in going to the lower court chose not to involve them at all. Such conduct was never appropriate at all and should not have been blessed by the trial court but ought to have been reprimanded.
17. In conclusion, the court finds the appeal to be wholly merited, allows it as prayed and therefore revokes the grant issued and confirmed in favour of the respondent.
18. Because the cause was filed before a court without jurisdiction, and because there is a cause pending before the high court which acknowledges the respondent and her children, the petition before the



lower court file is hereby struck out and parties are directed to seek the administration of the estate in the HCSUCC No. 34 of 2022.

19. Being a family dispute, each party shall bear own costs.
20. Let the court file be closed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF NOVEMBER, 2025.

PATRICK J O OTIENO

JUDGE

