

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL APPEAL NO. E128 OF 2022
FLORENCE MWONYIBOCHIU.....APPELLANT
VERSUS
MISHECK MUTHURI
KITHURE.....RESPONDENT

*{Being an appeal from the ruling in the Chief Magistrates' Court
Maua delivered by Hon. T. Gesora - Chief Magistrate on 1/9/20022}*

JUDGMENT

BACKGROUND

1. M'Muketha M'aranga, alias Samuel M'Muketha Ananga (deceased) died on 30th July, 1990. He had no spouse or child.
2. Vide High Court Succession Cause No. 18 of 1998 one Florence Matumbecu M'Limbere petitioned the court for letters of administration intestate. she described herself as the deceased's wife.
3. Subsequently a grant was issued by the Deputy Registrar and was then confirmed.
4. Thereafter, Misheck Muthuri Kithure, Janet Kaundu, Jackson Mutethia, Daniel Mugambi and Marieta Kaliunto moved the court to revoke/annul the grant on account of making false statements and concealment of material facts.

5. The applicants also averred that he petitioner had not sought the consent of other beneficiaries.
6. In a ruling delivered on 15th June, 2017, this court (Hon. Justice A. On'ginjo) revoked the grant and cancelled all transactions relating to the deceased's estate which comprised land Parcel No. Njia/Buuri-e-Ruri/1287. She ordered the land to revert to the name of the deceased until such time that the estate would be properly processed for circulation.
7. Following that decision, the said Misheck Muthuri Kithure petitioned the Chief Magistrate's Court at Maua on 21st January, 2021, for a grant of letters of administration intestate. He described himself as a grandson of the deceased. He listed the following persons as having survived the deceased;
 - a) Himself - Grandson**
 - b) Janet Kaundu - Widow**
 - c) Jackson Mutethia - Grandson**
 - d) Daniel Mugambi - Grandson**
 - e) Marrieta Kalintu - Granddaughter**
 - f) Florence Mwontobochiu M'Limbere - widow**
8. On 1st March, 2021, a grant of Letters of administration was issued by the court. Vide summons dated 7th September, 2021, the Petitioner applied for confirmation of the grant. Thereafter, summons for revocation of the grant were filed by the said Florence Mwontobociu, who this time described herself as a sister-in-law to the deceased.

9. The summons for revocation of the grant were determined by the ruling of the lower court delivered on 1st September, 2022, which dismissed the application.
10. Aggrieved by the said ruling the appellant filed a Memorandum of Appeal dated 19th September, 2022.

The Appeal

11. The appeal set out the following grounds: -
 - a) ***THAT the learned Chief Magistrate erred in law in failing to appreciate that he had no jurisdiction in view of the findings in Succession Cause No. 18 of 1998 in the High Court at Meru.***
 - b) ***THAT the learned Chief Magistrate erred in law in failing to find that he was bound in law by the judgment in succession Cause No. 18 of 1998 in the High Court of Meru.***
 - c) ***THAT the learned Chief Magistrate erred in law and in failing to adhere to the legal principles of the Law of Succession Act correctly.***
 - d) ***THAT the learned Chief Magistrate erred in law and in fact in failing to find that the Appellant being the deceased's sister as the wife of the deceased's brother by name Gachunge Ananga in law was a beneficiary of the deceased.***
 - e) ***THAT the learned Chief Magistrate erred in law in failing to appreciate that the intent and purpose of***

the Application before him was to have the grant issued to the Petitioner/Respondent revoked on grounds of non disclosure of material facts.

f) THAT the learned Chief Magistrate erred in law and in fact in failing to find that there being the surviving wife of the deceased's brother, the appellant stood in priority or at least pari passu to the Respondent who was the son of the deceased's brother in degree of consanguinity.

g) THAT the learned Chief Magistrate erred in law and in fact by failing to weight the Appellant's case against the weight of the evidence and thereby arriving at a wrong decision.

h) THAT the learned Chief Magistrate erred in law in effectively removing the Appellant from the list of the deceased's beneficiaries and hence outrightly denied justice to the Appellant.

i) THAT the learned Chief Magistrate erred in law and in fact by failing to appreciate/follow/observe the laid down principles of law in granting the relief sought by the Applicant.

12. The appellant thus sought orders that the appeal be allowed, that the ruling and all consequent orders of the lower court be set aside or reversed. She also sought costs of the appeal.

Appellant's Submissions

13. The appellant submitted that the lower court lacked the jurisdiction to determine the matter as it was bound by the decision of this court in Succession Cause No. 18 of 1998. Cited in support of these submissions were the cases of ***Jasbir Singh Rai & 3 Others versus Tarlochan Singh Rai Estate & 4 others (2013) eKLR*** and ***Sir Ali Salim versus Shariff Mohammed Sharray 1983KLR.***
14. It was further submitted that the lower Court failed to find that the respondent did not give a full account of all the assets of the deceased and that they had already sold parts of the estate, thus intermeddling with it. Cited was the case of ***Mpatinga Ole Kamunye Versus Meliyo Tipango & 2 Others (2017) eKLR.***
15. The appellant further submitted that the trial court failed to find that the deceased had donated or gifted her husband the suit property. That taking into account of this, then the suit land does not form part of the estate. To support the submissions that her husband had received a gift *inter vivos*, the appellant cited Section 42 of the Law of Succession Act.
16. It was submitted that under Meru Customary Law, where goats and other commodities were provided to the deceased by her husband then there was a gift *inter vivos* and its only that the transfer did not take place.
17. On the interpretation of gifts *inter vivos*, the applicant cited ***Re Estate of Gideon Manthi Nzioka (Deceased) (2015)eKLR.***

18. The appellant further submitted that the trial court ailed to find that as a surviving wife of the deceased's late brother, she stood in priority or at least in *pari passu* with the respondent, a son of the deceased's brother.
19. On the degree of consanguinity, and on grounds that can lead to revocation of the grant, the appellant cited ***Jamleck Maina Njoroge versus Mary Wanjiru Mwangi (2015) eKLR.***
20. It was further submitted that the trial court failed to consider that the respondent had intermeddled with the estate by selling part of the estate.

Respondent's submissions

21. In a nutshell, the respondent submitted that the trial court's ruling ought to be upheld.
22. It was pointed out that there was nothing done in secret as both parties were appointed as administrators and only differed on the issue of distribution. That the appellant had been guilty of non-disclosure of material facts that led to the revocation of the grant issued to her in High Court Succession Cause No. 18 of 1998. That the appellant never appealed against that decision.
23. It was further submitted that since the grant in the High Court had been revoked the lower court was not bound by the decision in that succession cause.

24. The respondent further submitted that by law, a daughter-in-law is not a beneficiary to a father-in-law's estate. Cited in support of this submissions were the cases of ***Re estate of Imoti Luhitse Paul (Deceased)(2021)eKLR*** and ***Re Estate of Francis Andalicha Luta (Deceased) (2022) eKLR.***

25. The respondent submitted that as a daughter- in -law, the appellant can only come to court as legal representative of her husband's estate.

26. The respondent further submitted that he was claiming a share of the estate as of right as a child of dead son of the deceased and did not require to take out letters of administration to intervene in the estate. Cited to buttress these submissions were the cases of ***Re estate of Florence Mukami Kinyua (2018) eKLR.***

27. The respondent further submits that he followed the due process in instituting the cause in the lower court. That the proposed mode of distribution adequately provides for the appellant's family.

28. The respondent urged the court to dismiss the appeal.

Analysis and determination

29. Being a first appeal, this court's duty is to evaluate the evidence/arguments made before the trial court and arrive at its own independent conclusion (***see Selle versus Associated Motors Boat Co. Limited (1968) EA 123.***)

30. From the material before the court, it is apparent that the deceased herein did not have any child. From the letter by the Chief, Muringene Location the deceased had the following siblings:

-

a) M'Ibuarethu M'Ananga - (deceased)- without children

b) M'Migwi M'Anaga (deceased) - with children and a surviving spouse).

c) Kabira M'Ananga (deceased) -with children

d) Gichunge M'Ananga (deceased)- with children and a surviving spouse).

e) Jadiel Kithure - (deceased)- with children and a surviving spouse.

f) Kabutia M'Ananga - (deceased)- without children

g) Karimi M'Ananga - alive

31. The respondent described himself as grandchild of the deceased herein but in reality, he is a nephew of the deceased, being a son to the deceased's brother. That fact was established by the lower court.

32. When he filed the petition in the lower court, the respondent listed the persons that I have mentioned earlier as the ones who pre-deceased or survived the deceased.

33. Where a deceased left no surviving spouse or children, then the provisions of Section 39 of the Law of Succession Act apply. It provides as follows:-

39. Where intestate has left no surviving spouse or children

(1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—

(a) father; or if dead

(b) mother; or if dead

(c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none

(d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none

(e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.

(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.

34. Therefore, since the deceased's parents were dead, the estate would have to devolve to the brother and sisters and any child or children of the deceased's brothers and sisters in equal shares.

35. Using the letter form the chief as a basis, then the estate of the deceased ought to have devolved to the following:-

- a) The children of M'Mugwi M'Ananga**
- b) The children of Kabira M'Ananga**
- c) The children of Gichunge M'Ananga**
- d) The children of Jadiel Kithure**
- e) Karimi M'Ananga**

36. All the above categories ought to have received equal shares meaning that the children of the deceased's brothers and sisters would have to share out their parents' entitlement between themselves.
37. It is evident that when the respondent filed the petition in lower court, he completely omitted Karimi M'Ananga, a sister to the deceased, who would also be entitled to a share of the estate. He also failed to list all the children of the late siblings of the deceased.
38. It is clear that the respondent fell into the same error that the appellant had, when she filed the petition in this court. Failure to disclose all the persons entitled to the estate is a material non-disclosure that warrants the revocation of the grant, under section 76 of the Act.
39. I am therefore, of the view that the grant itself ought to be revoked for the reasons given above.

40. The appellant's claim is that she, as a wife/spouse of the brother to the deceased was entitled to apply for the grant in priority or ***pari passu*** the respondent does not hold water.
41. It is well settled law that a daughter-in-law to a deceased does not acquire any direct right to the estate of the father to the . She can only move as a personal representative of the estate of her husband [See ***Re estate of Imoti Luhitse Paul (Deceased) (supra)*** and ***Re Estate of Francis Andalicha Luta (Deceased) (supra)***.]
42. It follows therefore that the appellant's claim without any grant of representation is unfounded. Her children with her husband, on the other side, are entitled by right to the estate, just like the respondent herein.
43. As to whether there was a gift *inter vivos* to the appellant's husband, I find that the appellant, for reasons that she is not her husband's personal representative, cannot raise the issue. She lacked the requisite *locus standi* to even approach the lower court.
44. In my view the best course is to have the parties follow the law in filing any petition regarding the estate.
45. For the reason that there was no consent obtained from Karimi M'Ananga, who is a sibling of the deceased, and no provision was made for her, I am inclined to revoke the grant.

46. For the avoidance of any doubt, the orders to revoke the grant are not based on the grounds set out by the appellant in the appeal herein.

47. In conclusion the following orders do issue;

a) The grant herein is hereby revoked.

b) The parties are to go back to the drawing board and file a fresh petition for letters of administration following these guidelines: -

i. All the children of the deceased's siblings who are also deceased should be listed in the Petition.

ii. The consent of all the above and Karimi M'Ananga to be obtained. If the said Karimi M'Ananga is deceased, then (a) herein will apply to her children.

iii. No transaction regarding the estate of the deceased is to be undertaken until a fresh grant is processed. Any such transaction conducted before that is null and void.

(c) There shall be no orders as to costs.

48. It is so ordered.

Dated, Signed & Delivered at Meru this 20th day of November, 2025.

**H. M. NYAGA
JUDGE**

