



REPUBLIC OF KENYA



**In re Estate of John Nanja (Deceased) (Succession Cause
319 of 2003) [2025] KEHC 874 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 874 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 319 OF 2003
SC CHIRCHIR, J
JANUARY 30, 2025
IN THE MATTER OF THE ESTTAE OF JOHN NANJA (DECEASED)**

BETWEEN

WICK OLUYALI SHINAMKURU PETITIONER

AND

EDWARD NANJO LISASO OBJECTOR

AND

EUNICE AKHONYA NANJO INTERESTED PARTY

RULING

1. The interested party herein (hereinafter referred to as the Applicant) filed the chamber summons dated 12th October 2023 seeking orders as follows;
 - a. That this honourable court be pleased to grant leave to the applicants herein Eunice Akhonya Nanjo to be enjoined as interested party in the proceedings.
 - b. That upon grant of leave, the interested parties be granted leave to response the the objector's/ applicants application for revocation of the grant.
 - c. That declaratory order be issued declaring the interested party herein as the beneficiary with unfettered share and proprietorship to land parcel KAK/Chekalini/4184 resulting from transmission of Kakamega/Chekalini/261.
 - d. That order 4 & 5 as prayed by the objectors in application dated 8/06/2023 be denied as the proposed co-administrator is compromised, not astute and bears ill motive in pursuit of the application and being co administrator.



- e. That this honourable court be pleased to order that Amasakha & company Advocates and all other advocates practicing in the name and the style of M/S Amaskha & Company advocates be and is hereby disqualified from representing the objector in the matter herein due to conflict of interest of the said advocate being advocate on record for the petitioner and family of deceased for the past 23 years to date.
- f. That the applications for summons for revocation made by the advocate be struck out.
- g. That following order 3&4 above. That this Honourable court be pleased to set aside its direction requiring petitioner and or the firm of Oyaró & Associates to pay a sum of Kshs. 11,000/= to the firm of Amasakha as cost for adjournment and attendance as such proceedings marred with insincerity.
- h. That in furtherance to order 4 and 5 this Honourable court direct the removal of restriction so placed by AMASAKHA & CO. ADVOCATES on the 8/10/2021 on land parcel KAK/Chekalini/4652, KAK/Chekalini/4653 KAK/Chekalini/4187 KAK/Chekalini/4188 KAK/Chekalini/4643 KAK/Chekalini/4180 KAK/Chekalini/4184KAK/Chekalini/4185 KAK/Chekalini/4186, KAK/Chekalini/4651KAK/Chekalini/4181 KAK/Chekalini/4182
- i. That this court finds that it lacks jurisdiction to determine issues of transfer, transmission, boundary dispute and adjustment of title, sub-division and ancillary rights to land s claimed by the objector.
- j. That this court be pleased to stood hearing set for 21/02/2024 pending hearing and determination of the application herein
- k. The costs of this application be provided for.

The Applicant's case

2. The Application is based on the grounds and supporting affidavit of the applicant Eunice Akoya Nanjo . she states that she is the daughter to the deceased; that she was not listed as a beneficiary of the deceased's estate ,but she was to get the share that had been allocated to her mother during the confirmation of the grant; that it was her late mother's wish that she should inherit her share of the estate property , being Title No. Kakamega / Chekalini/261 (the suit property); that indeed she was farming on her mother's portion of 1.2 acres even during the life time of her mother.
3. The Applicant further deposes that despite the above stated facts ,which were well known to the objector , there have been attempts to disinherit her. She believes the objection proceedings brought by the objector , are aimed at barring her from inheriting her mother's share of the estate.
4. It is her contention that her participation in the suit will give her a chance to articulate her interest in the estate.
5. She claimed that both the objector and the proposed co-administrator as per the summons for revocation , have sold their share of the land and are now delaying transmission and looking into ways to deny her from inheriting her mother's share in the estate.
6. The Applicant further states that since her mother died before transferring her portion to her, the petitioner undertook this task. She prays that she be considered as a beneficiary of the estate.
7. The Applicant is opposed to the representation of the objector by the firm of Amasakha and Co Advocates on grounds that the said firm has been the Advocate for the entire family , first during the succession proceedings in respect of her grandfather's estate and in these proceedings. She further



states that the Notice of appointment filed by Oyaro & Co purporting to represent the Petitioner is incompetent, as the firm of Amasakha and Company is still on record

The objector's response

8. The objector filed the replying affidavit dated 19th February 2024 in opposition to the Application. He admits that the Applicant is the daughter of the deceased but denies that their mother's share in the estate was to go to her. He further states that the Applicant has all along been aware of the proceedings in court, yet she has never raised any objection to the distribution of the estate.; that contrary to the Applicant's assertion their mother's share in the deceased's estate was to go to her, it was to go to one Fred Amugune Nanjo That the distribution of the estate was through the consensus of all the beneficiaries
9. The respondent further informs the court that, contrary to the the distribution based on the certificate of confirmation of Grant, the Applicant, in collusion with the Administrator, has managed to transfer a portion of 1.5 acres to herself. A certificate of official search, showing the Applicant as the proprietor of parcel No. Kakamega/ Chekakaini/ 4184 is attached to the affidavit.
10. On the alleged conflict of interest attributed to Amasakha & Co Advocates the objector states that he is entitled to pick an Advocate of his choice.
11. On the issue of costs of ksh. 11,000 earlier ordered by the court the objector sates that the said order does not affect the Applicant in any way.

Submissions

12. The parties filed their respective submissions which I have considered.

Analysis and determination

13. I have considered the Application, the replying Affidavit and the parties' submissions together with the Authorities relied on . I have identified the following issues for determination:
 - a). Whether the Applicant should be admitted as an interested party in this cause.
 - b). whether the firm of Amasakha and C0 Advocates should be barred from representing the Objector in this case.

Whether the Applicant should be admitted an interested party in this suit

14. The term interested party is not defined in the *Law of Succession Act*. At paragraph 1232 of Black's Law Dictionary, 9th Edition an "Interested Party" is defined as:

"A party who has a recognizable stake (and therefore standing) in a matter."
15. Rule 2 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms and Procedure Rules, 2013 (Mutunga Rules) defines an "interested party" as a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the Court but is not a party to the proceedings or may not be directly involved in the litigation.
16. In the persuasive decision in *Skov Estate Limited & 5 Others v Agricultural Development Corporation & another* [2015] eKLR the court stated that;
17. "In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that



the court may settle all questions involved in the matter.....It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.”

18. The applicant states that she is the daughter of the deceased; that she did not get a share during distribution and that her mother was holding her portion in trust for her. She further states that she is being discriminated against by virtue of being a female heir of the deceased.
19. The fact that the Applicant is a child of the deceased is admitted by the objector, he also admits the fact that the Applicant never benefited from the estate. His only complain is that the Applicant was all along aware about the proceedings and the manner in which the property of the deceased was distributed ; that she acquiesced on the manner of distribution and therefore she should be barred from submitting her claim this late in the day
20. The Applicant submitted that she had an identifiable stake in the proceedings herein as a daughter of the deceased and claimed that her late mother had held her shares in trust for her and her concern was that she risks being disinherited of her rightful shares.
21. Looking at the circumstances of this case, the fact that the Applicant is an heir to the deceased constitute a stake in these proceedings. Prima facie, she has a right of inheritance. The Objector’s argument that she slept on her rights does not extinguish those rights. She needs to be enjoined in the cause to articulate her rights.
22. Further the competing claims are in respect of the same Estate. To avoid multiplicity of suits , it is necessary that all the claims be resolved at once, and to allow completion of Administration of the estate.

Am therefore persuaded that this prayer is warranted.

whether the firm of Amasakha and Co Advocates should be barred from representing the Objector in this case.

23. The applicant has stated that the firm of Amasakha & Co Advocates had represented them, as the family of the deceased and beneficiaries from the start of this cause; that they had established an advocate-client fiduciary relationship and that the rest of the beneficiaries would be prejudiced if the firm now represent the Objector only.
24. In response the objector states that he reserves the right to an Advocate of his choice. While relying on the decision of Delphis Bank Channan Singh chat (2005) e KLR , the Respondent added that the right to an Advocate of one’s choice is the most valued constitutional Right to a litigant. That the said Advocate has continued to act in the interest of the beneficiaries , save the petitioner, who has disregarded the provisions of the certificate of confirmation of grant. It is further submitted that there is no anticipation that Amasakha Advocate will be a witness in this cause.
25. In the case of Delphis bank Ltd vs Channan (supra) cited by the respondent the court held as follows;;

“There is otherwise no general rule that an advocate cannot act for one party in the matter and then act for the opposite party in subsequent litigation. The test which has been laid



down in authorities applied by this Court is whether real mischief or real prejudice will in all human probability result.”

26. There are other past decisions which shed further clarity on possible conflict when an Advocate is caught up in such scenario. In *In RE Estate of William Kimutai Martin (deceased)* [2018] eKLR Muchelule J stated as follows;

“Secondly having acted for all the beneficiaries of the estate, and specifically for the applicant during administration of the estate of her deceased husband Ian Kipkoech Martin who was an executor of the Will dated 20th July 2011, Mr. Munyororo again is conflicted in the present suit where he now acts against his former client the applicant.”

27. Similarly Makau J who in *Njama Wambugu Vs Space And Style Limited* [2018] eKLR stated;

“In the instant matter, the plaintiff has sufficiently demonstrated existence of a retainer between the plaintiff, 2nd defendant and the Advocates and the Advocates should not have agreed to act for any of the parties herein, thus the plaintiff and the 2nd defendant due to conflict of interest between the two clients.

Further I find that the Advocate had confidential information which may be used in representing the 2nd defendant as against the plaintiff wittingly or unwittingly to the disadvantages of the plaintiff or former client or to the advantages of the other client.

There is real mischief or real prejudice against the applicant which in all human likelihood may occur.....”

28. In the present case , there is no dispute that Amasakha Advocate filed this petition on behalf of the petitioner. The firm represented the petitioner and beneficiaries all the way to the confirmation of grant. Thereafter the beneficiaries disagreed on the distribution of the property despite the fact that the mode distribution had been done by the court.

29. The dispute presently before court is between the petitioner and some of the beneficiaries, one of them being the objector herein. Amasakwa Advocate is the one who has filed the objection proceedings against the petitioner , who is also his client in the same cause.

30. Amasakwa Advocate, having been the one who filed the petition, it follows that all the facts and circumstances of this cause are well known to him.

31. Granted, there is supposedly a new Advocate for the petitioner on record, M/S Oyaro & CO. This new firm filed a Notice of appointment instead of Notice of change of Advocates . In effect as far as the record of these proceedings go , Amasakha Advocates are still the legal counsel of both the petitioner and the objector. Both parties are on opposing sides. The likely hood of prejudice to be suffered by the objector and other beneficiaries who are not on the same side as the objector, is real.

32. Further and in any event paragraph 23 of part II of the Advocate code of standard of professional Ethics and Ethical standards published under gazette Notice No. 5212 of 2017 provides as follows: The Advocate shall not advise or represent both sides of a dispute and shall not act or continue to act in a matter when there is a conflicting interest, unless he/she makes adequate disclosure to the client(s) and obtains the client’s consent.

33. Such conflict may constitute a professional misconduct. Thus the issue of conflict of interest is no longer of an interest to a client but Advocates may well need to pay attention to it.



34. In the end , the circumstances of this case clearly point to a real potential conflict of interest by the Advocate. The Applicant’s apprehension of bias and potential prejudice is valid.
35. Other prayers in the Application
- a). The prayer to respond to the objection proceedings is available to any beneficiary of a deceased’s estate or indeed any interested party and therefore the prayer to respond to the objection proceedings is unnecessary.
 - b). As for prayer 7 of the Application, these orders were not directed at the Applicant , does not affect her and the party directed to as not raised an complain, the same are therefore denied
 - c). Prayers 3,4,6,8 and 9 of the Application affect the other beneficiaries of the estate and there was no evidence that they were served. To the extent that they affect the other beneficiaries , should not be lumped together with the prayers that I have so far addressed . The are therefore denied.
36. In conclusion, I hereby proceed to make orders as follows:
- a) The Applicant is hereby granted leave to be enjoined in this suit.
 - b). The firm of Amasakha Advocate is hereby barred from representing the Objector in these proceedings.
 - c). To move this matter forward all parties are hereby directed to regularise their representation if any on the cause.

DATED, SIGNED AND DELIVERED AT Kakamega THIS 30TH DAY OF JANUARY 2025.

S. CHIRCHIR

JUDGE

