



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Matisela Elisha Likoko (Deceased) (Succession Cause
730 of 2010) [2025] KEHC 4255 (KLR) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4255 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 730 OF 2010
AC BETT, J
MARCH 26, 2025**

BETWEEN

FRIDAH INGATO LIKOKO APPLICANT

AND

FINNY EKONYI LIKOKO 1ST OBJECTOR

MIRIA MAKEBA LIKOKO 2ND OBJECTOR

JAPHETH OMUCHEI 3RD OBJECTOR

AND

MJ-WATERFRONT INTERESTED PARTY

RULING

1. By an application dated 10th February 2023, the Objectors sought revocation of Grant of Letters of Administration Intestate issued to the Petitioner herein and confirmed on 1st October 2012. The Objectors also prayed that all titles emanating from L. R. No. Isukha/shirere/3154 and L.R. No. East Bunyore/ebushiratsi/553 be cancelled and the titles to revert to the estate to pave way for fresh distribution.
2. The Objector's application was supported by an affidavit in which the Objectors deponed that the Petitioner had excluded some dependants of the deceased in the succession proceedings. According to them, whereas the deceased had five children, the Petitioner named only two children in the Petition for letters of administration. They also averred that one Bonface Likoko who is included in the proceedings is not a dependant of the deceased but a child to the 2nd Objector.
3. The application was not opposed by the Petitioner and on 3rd November 2023, the Petitioner who is the Objector's mother recorded a consent with the Objectors in which the Objector's application was



allowed in toto after which the Petitioner filed Summons for Confirmation of Grant in a bid to do a fresh distribution of the estate of the deceased.

4. The move by the Petitioner and the Objectors to revoke the title resultant from subdivision of L.R. No. Isukha/shirere/3154 affected third parties who had purchased portions of the land from the Petitioner. Subsequently, the 3rd Objector and the Interested Party were enjoined to the proceedings and filed their affidavits in response to the objection proceedings.
5. Directions were issued that the objection proceedings be disposed of by written submissions. I have perused all the parties' affidavits and written submissions.

Objectors' Case

6. It is the Objector's case that the Petitioner failed to disclose or involve all the dependants of the deceased and upon securing Certificate of Confirmation of Grant, caused L.R. No. Isukha/shirere/3154 to be subdivided into two portions namely Parcel No. 1601 which she transferred to Japheth Likoko and Parcel No. 1602 which she transferred to one Wilson Khatoya Peru. The Objectors further aver that the Petitioner jointly with Japheth Likoko who is a co-dependant, sold off the land comprised in L.R. No. East/bunyore/ebushiratsi/553.
7. The Objectors annexed a Certificate of Search in respect to L.R. No. Isukha/shirere/6101 which comprises 0.28 hectares and is currently registered in the name of Japheth Abraham Omucheyi the 3rd Objector herein. They also annexed a certified true copy of the register issued on 6th January 2021 which reflects the deceased as a co-proprietor with 2 others of 2.0 acres comprised in LR. No. East Bunyore/ebushiratsi/553. The copy of the register does not define whether the co-ownership was joint or a tenancy-in-common. A certificate of official search in respect to L.R. No. East Bunyore/ebushiratsi/553 dated 1st April 2021 does not reflect the deceased herein as a co-owner of the land.
8. It is the Objectors' case that all the beneficiaries of the deceased should have been provided for, hence their application that the titles revert to the estate to pave way for fresh distribution.
9. It is the 3rd Objector's case that he purchased the land comprised in L.R. No. Isukha/shirere/1601.

Petitioner's Case

10. The Petitioner swore an affidavit in response to the objection in which she pleaded ignorance and attributed the transfer of the deceased's property to illiteracy. She blamed Japheth Likoko for taking advantage of her to disinherit her and other beneficiaries of the estate of the deceased and said that she was not opposed to the Objector's application.

Interested Party's Case

11. The Interested Party, who successfully applied to be enjoined to the proceedings, opposed the application. It averred through its Director that it purchased their portions of land now comprised in L.R. No. Isukha/shirere/6999 and Isukha/shirere/7000 which titles were created upon subdivision of L.R. No. L.R. No. Isukha/shirere/3154 from one Wilson Kwatoya Peru who was a liability to the estate of the deceased.
12. The Interested Party further avers that it has since 2021, applied for change of user and extensively carried out mining activities on the land.
13. It is the Interested Party's averment that there is no evidence of fraud or illegalities in the succession proceedings. The Interested Party annexed the copies of its titles and a Certificate of Official Search



dated 4th December 2023 which reflects that Wilson Kwatoya Peru was entitled to 1.2 hectares of L.R. No. Isukha/shirere/3154.

3rd Objector's Case

14. The 3rd Objector swore an affidavit in which he avers that the property comprised in L.R. No. Isukha/shirere/3154 was transmitted to the Petitioner who went ahead to subdivide the same with Parcel No. 1601 being retained in her name while parcel No. 1602 was transferred to Wilson Kwatoya Peru who was a beneficiary in the succession cause. He avers that Parcel No. 1601 was transferred to him to hold in trust for himself and his siblings on 21st June 2019 but his efforts to transfer the same to them was met with resistance due to mistrust.
15. It was the 3rd Objector's case that he is a son to the deceased and that the deceased had sold some portions of the estate to third parties during his lifetime which the Petitioner ignored while entering into a consent for revocation of the titles resultant from subdivision of the deceased's estate. He annexed copies of agreement showing that Wilson Kwatoya Peru had entered into an agreement to purchase a portion of the land from the deceased in August 2002.
16. The 3rd Objector avers that he does not know the current status of L.R. No. East Bunyore/ebushiratsi/553 and if it has been sold, then he was not involved in its sale.
17. The Objector contends that there is no evidence that he colluded with the Petitioner to sell the suit land and avers that it is the duty of the Petitioner to file suit in the Environment and Land Court to challenge the title over L.R. No. East Bunyore/ebushiratsi/553.
18. Upon considering the parties depositions and their respective submissions, I find that the following issues have been raised for my determination:-
 - a. Whether the Grant of Letters of Administration intestate should be revoked.
 - b. Whether the titles emanating from or comprised in L.R. No. Isukha/shirere/3154 and L.R. No. East/bunyore/ebushiratsi/553 should be cancelled and the title revert to the deceased.
 - c. Whether the Interested Party is a beneficiary to the estate of the deceased.
 - d. Whether the estate of the deceased should be distributed afresh.
19. It is not in dispute that the deceased left surviving the following dependants:-
 - a. Fridah Ingato Likoko (Widow)
 - b. Finny Ekonji Likoko (Son)
 - c. Miria Makeba Likoko (Daughter)
 - d. Millicent Afandi (Daughter)
 - e. Balestin Likoko (Daughter)
 - f. Charles Elisha Likoko (Son)
 - g. Japheth Likoko (Son)
20. At the time of filing the Petition for Grant of Letters of Administration, the Petitioner listed the following as surviving the deceased:-
 - a. Fridah Ingato Likoko (Widow)



- b. Finny Ekonji Likoko (Son)
 - c. Japheth Likoko (Son)
 - d. Boniface Likoko (Son)
 - e. Wilson Kwatoya Peru (Buyer)
21. In her application for confirmation of Grant of Letters of Administration, the Petition listed herself and Wilson Kwatoya Peru as the beneficiaries of the estate of the deceased with Wilson Kwatoya Peru being entitled to 1.2 hectares in L.R. No. Isukha/shirere/3154 while she would hold the net estate of 0.5 hectares in trust for Finny Ekonye, Japheth Likoko and Bonface Likoko.
22. I have perused the proceedings and I have established that on the day when Summons for Confirmation of Grant of Letters of Administration was allowed, the beneficiaries who were present were the ones named in the Petition. None of the daughters of the deceased were present.
23. Section 29 of the *Law of Succession Act* defines the dependants of a deceased person as follows:-
- “29. For the purposes of this Part, "dependant" means—
- a. the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
 - b. such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
 - c. where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.”
24. From the outset, it is evident that the Petitioner did not treat her children with the deceased equally. She did not involve the daughters of the deceased in the succession process for if she had, there would have been records in the court file that she did so. The Petitioner did not file any consent forms executed by all the dependants of the deceased or any renunciation form by any of the daughters that were excluded in the succession process. The Petitioner acted in discrimination of the deceased's daughters and in violation of the *Law of Succession Act*.
25. In Re Estate of Solomon Ngatia Kariuki (Deceased) [2008] eKLR, the Court held as follows:-
- “The *Law of Succession Act* does not discriminate between the female and male children or married and unmarried daughters of the deceased person when it comes to the distribution of his estate. All children of the deceased are entitled to stake a claim to the deceased's estate. In seeking to disinherit the protestor under the guise that the protestor was married, her father, brothers and sisters were purportedly invoking a facet of an old Kikuyu Customary Law. Like most other customary laws in this country they are always biased against women and indeed they tend to bar married daughters from inheriting their father's estate. The justification of this rather archaic and primitive customary law demand appears to be that such married daughters should forego their father's inheritance because they are likely to enjoy the inheritance of their husband's side of the family.”



26. The Objectors also contested the Grant because one of the persons named as a beneficiary is a grandson of the deceased. Under the [Law of Succession Act](#), a grandchild does not qualify to be a direct beneficiary of the estate of the deceased unless it is proven that the deceased had taken the grandchild into his family as his own. Rather, the grandchild inherits the deceased's property through his parent who is the automatic beneficiary.
27. In *Re Estate of Florence Mukami Kinyua (Deceased)* [2018] eKLR, the court pronounced itself thus:-
- “A grandchild is a direct heir to the estate of the grandparent where the parent predeceased the grandparent. The grandchildren get into the shoes of their deceased parents and take the parent's share in the estate of the grandparents. This was stated in *Re Estate of Wahome Njoki Wakagoto* (2013) eKLR where it was held:-
- “Under Part V, grandchildren have not right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”
28. Based on the above reasons, despite the fact that the Objectors did not specifically plead concealment, I find and hold that the Grant was obtained by concealing of material matters from the court, to wit, that the deceased was also survived by daughters. To that extent, the proceedings to obtain the Grant were defective in substance and therefore the Grant should be revoked.
29. In regard to the second issue, the evidence is that the title in respect of L.R. No. Isukha/shirere/3154 was extinguished on transmission. Pursuant to the Confirmation of Grant of Letters of Administration, the title was subdivided into two portions and the resultant titles being L.R. No. Isukha/shirere/6101 transmitted to Japheth Abraham Omucheyi the 3rd Objector herein while L.R. No. Isukha/shirere/6101 was transmitted to Wilson Kwatoya Peru.
30. The issue for consideration is whether the titles issued on transmission and any subsequent titles issued thereafter should be cancelled.
31. Protection of right to property is one of the fundamental rights in [the Constitution](#). Article 40 (1) and (3) of [the Constitution](#) provides:-
1. Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—
 - a. of any description; and
 - b. in any part of Kenya
 3. The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
 - a. results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or



- b. is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—
 - i. requires prompt payment in full, of just compensation to the person; and
 - ii. allows any person who has an interest in, or right over, that property a right of access to a court of law.”
- 32. Despite Article 40 protecting one’s right to property, there is a proviso in Article 40 (6) that forewarns against unlawfully acquired property. It provides:-

“The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.”
- 33. In light of the express provisions of Article 40 (6), this court has to determine whether a title acquired on transmission pursuant to a grant that is subsequently revoked on account of defective proceedings or fraud is protected by the law.
- 34. Under Section 26 (1) of the *Land Registration Act* 2012, a certificate of title is prima facie evidence that the person named as the registered owner is the absolute owner with indefeasible rights to the title. The title however, can be challenged on grounds of fraud, misrepresentation or if the title was acquired illegally or through a corrupt scheme, or in an unprocedural manner.
- 35. The Interested Party submits that it acquired the title lawfully after it had been transmitted to one of the beneficiaries. It submits that this court became functus officio unless it is proven that transmission was fraudulent or illegal.
- 36. I have already made the determination that the process to acquire the grant was defective in that the other lawful beneficiaries of the deceased were not involved in the proceedings. It therefore follows that the titles acquired on transmission after the defective process were wanting.
- 37. The Interested Party did not argue that its title is protected under Section 93 of the *Law of Succession Act* which provides as follows:-

“93 (1) All transfers of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act, by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.”
- 38. In regard to the third issue, the Objectors submit that the Interested Party is not a principal party to the suit and contends that he cannot join these proceedings when it brought itself to the proceedings.
- 39. The said argument against the Interested Party is curious because the Interested Party were enjoined to the proceedings after it proved that it had purchased the interest of one Wilson Kwatoya Peru.
- 40. Wilson Kwatoya Peru was named as a beneficiary of the estate of the deceased in his capacity as a buyer. The introductory letter from the Area Chief has included his name and when applying for confirmation of the Grant of Letters of Administration on 25th April 2012, the Petitioner indicated that she was entitled to 0.5 hectares while Wilson Kwatoya Peru was entitled to 1.2 hectares in L.R. No. ISUKHA/SHIRERE/3154. On the date the grant came up for confirmation, all of the named beneficiaries except for the daughters were present. No one contested the purchaser’s entitlement to the 1.2 hectares then.



41. In their affidavit in support of Summons for Revocation of Grant, the Objectors have not challenged the interest acquired by Wilson Kwatoya Peru. In fact, they have deponed as follows:-
7. That the Petitioner was granted letters of grant in respect of the estate of the deceased she subdivided the land into 2 parcels; Isukha/shirere/1601 which she transferred in her nae and Isukha/shirere/1602 which was transferred to one Wilson Khatoya Peru.
 8. That the Petitioner later transferred the whole of parcel No. Isukha/shirere/1601 to one of her sons who is in the process of selling part of it Japheth Likoko thereby leaving out rest of the beneficiaries (Annexed is a certificate of search marked FEL-1).”
42. In her replying affidavit, the Petitioner did not challenge the interest that was transmitted to the purchaser. She only averred that she undertook the succession proceedings under the guidance of her son Japheth Likoko and trusted him to include the Objectors as beneficiaries in the estate of the deceased.
43. Upon review of the record, I am inclined to believe that the Petitioner was not being candid with the court and was engaging in a scheme that was designed to deny the Interested party its interest in the property. My view is strengthened by the fact that the Petitioner and the Objectors recorded a consent on 25th September 2023 in which all the Objectors’ prayers were granted and on 1st November 2023, the Petitioner filed Summons for Confirmation of Grant dated 24th September 2024 in which she proposed a mode of distribution of the estate of the deceased that did not take the buyers and/or the Interested Parties interest into account.
44. The buyer, Wilson Kwatoya Peru, who sold his 1.2 hectare portion to the Interested Party, filed an affidavit of protest but was not enjoined to the suit. However, he deponed that he had been in occupation of the said portion, cultivating maize on a yearly basis for over twenty (20) years, having purchased the land from the deceased.
45. In the case of *Mpatinga Ole Kamuye v. Meliyo Tipango & 2 others* [2017] eKLR, the court stated as follows:-
- “ This Court’s view before distribution of the estate of the deceased under Section 71 of the *Law of Succession act* Cap 160; the Court must satisfy itself that the beneficiaries of the estate are the legitimate beneficiaries of the estate; that there are assets that comprise of the deceased’s estate and are available for distribution after settling all liabilities and having the net estate for distribution.”
46. To the extent that the rights of Wilson Kwatoya Peru as a purchaser of a portion of the estate of the deceased were not contested by the Objectors and the Petitioners, the said Wilson Kwatoya Peru is deemed to be a liability in the estate.
47. In the case of *Titus Muraguri Wanothe & 2 others -vs- Naomi Wanjiru Wachira Njeru* [2009] eKLR, Makhandia J, (as he then was) held that:-
- “In the instant case the applicants are purchasers for value of a portion of the deceased’s estate comprised in the grant. There is uncontested and unchallenged evidence that before the deceased passed on, he had sold various portions of land to the applicants, and he had been fully paid and had indeed put each one of the applicants in possession of their respective portions that they had purchased. The applicants have to date been in continuous and uninterrupted occupation of those portions and have extensively developed them. The



respondent who is the wife of the deceased was all along aware of these transactions involving her deceased husband and the applicants.”

48. Being guided by the above decisions, I find that Wilson Kwatoya Peru is a liability to the estate of the deceased herein and by extension, the Interested Party, being a purchaser for value from the said Wilson Kwatoya Peru, should be legitimately considered in the distribution of the estate of the deceased.
49. I note that the Interested Party is in occupation and has developed the land that was purchased from Wilson Kwatoya Peru, and which was hived off from L.R. No. Isukha/shirere/1602 (Now 6999 and 7000) who I have held to have been a liability and therefore to have heard a beneficial interest in the estate of the deceased. It is in the interest of justice that the status quo with regard to that property be maintained pending the hearing and determination of these proceedings.
50. I am alive to the fact that since the proceedings to obtain the Grant was defective and there was concealment of some of the beneficiaries of the deceased, then the Petitioner did not obtain a valid interest in the property that was capable of being transferred. I have also considered the fact that the revocation of the Grant would render all titles resulting from the transmission of the property null and void since the title acquired by the Petitioner was defective. However, the Interested Party acquired the property as a bona fide purchaser from the deceased. It is in the interest of justice that the said purchaser’s interest be preserved.
51. In view of the foregoing, I hereby make the following orders:-
 - a. That the Certificate of Confirmation of Grant of Letters of Administration is hereby revoked.
 - b. That all that land parcel known as L.R. No. Isukha/shirere/1601 do revert to the name of the deceased.
 - c. That L.R. No. East Bunyore/ebushiratsi/553 be included as part of the deceased’s estate.
 - d. That a prohibitory order do issue forbidding the registration of any transaction over L.R. No. Isukha/shirere/1602 and all the titles resultant from subdivision thereof pending the determination of this cause.
 - e. That the Petitioner shall file Summons for Confirmation of Grant and serve the same upon Wilson Kwatoya Peru, the Interested Party, Robert Makhatsa Inzekele and Joseph Masaka Inzekele within forty five (45) days from today.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 26TH DAY OF MARCH 2025.

A. C. BETT

JUDGE

In the presence of:

Mr. Mukavale K. Holding brief for Mr. Magina for 3rd Objector

Mr. Wandalla for 1st and 2nd Objectors

Petitioner present in person

Court Assistant: Polycap

