



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Hezron Lidede Ndanyi (Deceased) (Succession Cause
154 of 1999) [2025] KEHC 5173 (KLR) (Family) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5173 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 154 OF 1999
HK CHEMITEI, J
APRIL 30, 2025
IN THE MATTER OF THE ESTATE OF HEZRON LIDEDE NDANYI (DECEASED)**

BETWEEN

EDWIN AMULELE NDANYI APPLICANT

AND

ESTHER MUSOLITSA NDANYI RESPONDENT

RULING

1. This ruling relates to the application dated 6th October, 2022 filed by the Applicant, Edwin Amulele Ndanyi, seeking for orders that:-
 1. Spent.
 2. The hearing on distribution of the estate be stayed pending the hearing and determination of this application interpartes.
 3. The hearing on distribution of the estate of the deceased be stayed until proper account and status of the whole of the estate of the deceased is established by the Administrators.
 4. The Administrators of the estate of the deceased be compelled to locate and compile a report on the entire estate of the deceased for purposes of distribution.
 5. The name of the representative of Hudson Savalla Ndanyi be included in the list of beneficiaries of the estate of the deceased.
 6. Costs of the application be provided for.



2. The application is supported vide supporting affidavit and supplementary affidavit sworn by Edwin Amulele Ndanyi on 6th October, 2022 and 1st March, 2023 respectively.
3. He avers inter alia that he is a beneficiary to the deceased's estate. He is challenging the proposed mode of distribution due to concerns over disputed property ownership and inclusion of non-beneficiaries. He highlights specific properties - like Nyali Plot No 6552/I/MN and Lower Kabete Plot No 15083/15 - that have been seized through land fraud and remain unresolved. He objects to the inclusion of individuals such as Julie Lidede and Arnold Andayi, while legitimate heirs like the late Hudson Savala Ndanyi have been excluded.
4. That despite raising concerns with the estate's lawyer, no corrective action was taken, prompting him to file a formal objection. He details a prolonged effort to recover the Nyali property - Plot No MN/I/6552/CR.20898 - from fraudsters who altered ownership records using fake documents. After a long legal struggle, the fraudulent title was revoked in 2016 and official records were updated in 2022. He now seeks to be appointed as co-administrator alongside his mother to protect the estate and ensure fair distribution, especially with unresolved matters like the omission of Nairobi South C Villa No 10 on Plot No 209/11454 from the estate plan.
5. The application is opposed vide grounds of opposition filed by Daisy Shaga Ndanyi, a beneficiary; and it is based on the grounds that:-
 1. Prayer No 4 is moot as the Administrators have already located and compiled the estate's assets by dint of the letters of administration being issued to them on 9th April, 2003 and the beneficiaries have agreed on a mode of distribution.
 2. Prayer No 5 of the application contravenes Rule 45 of the *Probate and Administration Rules* and section 29 and 26 of the *Law of Succession Act*, Cap 160 on the procedure to be followed and requirements to be met by an individual claiming dependency and a share in the estate.
 3. The Applicant lacks the locus standi to pray for prayer No 5.
 4. Prayer No 5 is ambiguous and cannot be granted as the representative of Hudson Savalla Ndanyi (Deceased) is unspecified and or unknown.
 5. The application is fatally defective for failure to quote and or cite the provisions of any law on which the Applicant is relying on to seek the orders thereon.
 6. The application is therefore incompetent, misconceived and an abuse of the court process.
 7. The application should therefore be struck off with costs.
6. The application is further opposed vide replying affidavits sworn by Arnold Shiribwa Ndanyi, Esther Musolitsa Ndanyi, Julie Lidede; dated 2nd November, 2022, 21st December, 2022 and 19th November, 2024 respectively; and further replying affidavit sworn by Esther Musolitsa Ndanyi on 5th April, 2023.
7. They aver inter alia that the Applicant has not provided valid or official search documents to back his claims regarding the ownership of Plot No 655/1/MN, instead submitting a photocopy of a 2020 search, which does not reflect the current property status. There is no evidence of the property being taken by fraudsters.
8. That Arnold Shiribwa Ndanyi, the deceased's biological son and Margaret Kamonya Ndanyi, one of his wives, are rightful beneficiaries. The beneficial interests of a deceased person automatically pass to their estate or beneficiaries, making it unnecessary to list the deceased Hudson Savalla Ndanyi's beneficiaries again.



9. Further Esther, the deceased's widow and the Applicant's mother, has been managing the estate, which has been in court for over 23 years without distribution. The consent to distribution, drafted in March 2019, followed discussions encouraged by Lady Justice Rawal and Mr. Justice Onyiego, and it properly identified beneficiaries and their shares. Julie Lidede's inclusion as a beneficiary was agreed upon during family discussions, which the Applicant participated in.
10. She averred that she was unaware of any additional account or status of the estate that needs to be produced. The Applicant has only provided outdated documents, such as the February 2022 search for Plot No 6552/I/MN. The National Land Commission has confirmed that the property belongs to the deceased.
11. Esther has not mismanaged the estate, and there is no evidence of her dispossessing the estate of any property. The issues surrounding Nyali, Lower Kabete and Nairobi South C properties will be resolved after the certificate of confirmation of grant is issued.
12. They therefore urged the court to confirm the grant for the estate's distribution, as there is no application for revocation. Julie Lidede, the deceased's sister, is entitled to 50% of Plot No 6552/I/MN, which she developed jointly with the deceased. They agreed in 1982 to contribute equally to the project and Julie made several payments towards it. After the deceased's death, a succession case resulted in a court order granting her 50% of the property, which has not been overturned. As per the court order, Julie is entitled to two apartments on Plot No 6552/I/MN. The administrators filed for confirmation of the grant with all beneficiaries signing, except the Applicant, who has delayed the process while benefiting from rental income.
13. The parties have not filed written submissions.

Analysis And Determination

14. I have carefully considered the application before the court and the responses thereto.
15. From the onset it is evident that this matter has been in this corridor of justice for close to 25 years. The issues which the Applicant has raised have been dealt with and in particular the element of fraud well captured in the responses least of all by her mother. In any event if there is any fraud by third parties then it is the responsibility of the administrators to deal with it at the Environment and Land Court and not this court.
16. Needless to state that the said fraudsters are not among the beneficiaries herein. In any case the said administrators have not demonstrated any inability to deal with such.
17. There is litany of efforts made by the parties and the court to settle this matter. He has not demonstrated what he stands to suffer if the grant is confirmed. The persons he is alleging to have been left out namely Arnold Ndanyi and the estate of Hudson Savala Ndanyi have been taken care of and they have not raised any objection to the grant being confirmed.
18. I agree with the Respondents that this is a matter where the court needs to stamp its authority and ensure that the estate is brought to a definitive conclusion.
19. In the premises I do not find any merit in the application and dismiss it with costs.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 30TH DAY OF APRIL 2025.

H K CHEMITEI



JUDGE

