



**In re Estate of John Wekesa Wafula alias Bengi (Deceased) (Probate & Administration E016 of 2023) [2024] KEHC 675 (KLR) (31 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 675 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
PROBATE & ADMINISTRATION E016 OF 2023**

**DK KEMEL, J**

**JANUARY 31, 2024**

**IN THE MATTER OF THE ESTATE OF JOHN  
WEKESA WAFULA ALIAS BENGI (DECEASED)**

**MARGARET NANYAMA WEKESA ...1ST PETITIONER /APPLICANT**

**DAVID WAFULA WEKESA .....2ND PETITIONER/ APPLICANT**

**VERSUS**

**MARY NAFULA WAMUKOTA .....1ST RESPONDENT**

**JUDITH NELIMA WANYONYI ..... 2ND RESPONDENT**

**BETWEEN**

**MARGARET NANYAMA WEKESA ..... 1<sup>ST</sup> PETITIONER**

**DAVID WAFULA WEKESA ..... 2<sup>ND</sup> PETITIONER**

**AND**

**MARY NAFULA WAMUKOTA ..... 1<sup>ST</sup> RESPONDENT**

**JUDITH NELIMA WANYONYI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Petitioners/Applicants filed the present application dated 10.7.2023 pursuant to section 47 of the [Law of Succession Act](#), Rule 73 of the [Probate and Administration Rules](#) seeking the following reliefs: -
  - i. Spent
  - ii. Spent





to prepare them in these proceedings and thereafter have the grant confirmed from where they will be at liberty to legally acquire their rightful shares under the estate. It is apparent that some of the beneficiaries have already purported to distribute the estate or engage with third parties over their shares. The law of Succession vide Section 45 forbids any person from intermeddling with the estate of a deceased person. The same provides as follows: -

S.45 (1) Except so far as expressly authorized by this Act or by any other written law, or by a grant of representation under this Act, no person shall for any purpose take possession or dispose of or otherwise intermeddle with the free property of a deceased person;

(2) Any person who contravenes the provisions of this section shall -

- a) be guilty of an offence and liable to a fine of ten thousand shillings or to imprisonment not exceeding one year or to both such fine and imprisonment; and
- b) be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments in the due course of administration.

From the foregoing provision, it is now clear per adventure that what the beneficiaries have done is a violation of the law as far as the estate of the deceased herein is concerned. The Respondents have annexed a copy of minutes of an alleged clan meeting which took place on 15.10.2022 and which purported to distribute the estate of the deceased. The petitioners have rubbished the same and denied that such a meeting ever took place since none of the family members attended and further that their names and signatures are not on the document. I am inclined to agree with the petitioners' sentiments that the alleged minutes must be forgeries. In any case, no other person or body has authority to distribute the estate of a deceased person who died intestate other than a court of law. The petitioners have done the right thing by moving to court so as to obtain a grant of letters of administration and thereafter have it confirmed and be able to proceed to administer and distribute the estate of the deceased. As the matter has landed in court, the court must now proceed to issue directions and put the beneficiaries and other parties on notice that any intermeddling of the estate before confirmation of the grant will attract serious consequences.

8. As the Respondents have admitted selling a portion of the estate, I find that they are guilty of intermeddling in the estate. They have no capacity to pass any interest in land to the alleged purchaser since there is no confirmed grant. It seems they have been misled by the alleged clan deliberations to go against the law yet the clan has no powers to distribute property of the deceased herein as that is a preserve of the courts. The Respondents must now be called to heel and warned to stop intermeddling with the estate of the deceased forthwith. The Respondents must wait for the grant to be issued to the petitioners and that all the beneficiaries will participate during the confirmation of the grant. An order for the preservation of the assets is appropriate at this state so as to ensure that they are not dissipated and to ensure that they are available for distribution to the beneficiaries once the grant is confirmed.
9. In view of the foregoing observations, I find merit in the petitioners' application dated 10.7.2023. The same is allowed in terms of prayer No. 3. Each party to bear their own costs.

**DATED AND DELIVERED AT BUNGOMA THIS 31<sup>ST</sup> DAY OF JANUARY 2024.**

**D KEMEI**

**JUDGE**



In The Presence Of:-

No appearance Nyamu for Petitioners/ Applicants

No appearance Miss Arunga for Respondents

Kizito Court Assistant

