



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Paul Kimeu Masika (Deceased) (Succession Cause
594 of 2011) [2024] KEHC 6597 (KLR) (31 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6597 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 594 OF 2011**

MW MUIGAI, J

MAY 31, 2024

**IN THE MATTER OF THE ESTATE OF PAUL KIMEU
MASIKA (DECEASED)**

BETWEEN

LILIAN NJERI MASIKA 1ST PETITIONER

KENETH MASIKA 2ND PETITIONER

AND

JOSEPH NZUKI MASIKA 1ST OBJECTOR

KIOKO KIMEU 2ND OBJECTOR

JUDGMENT

Background

1. The deceased Paul Kimeu Masika died on 23rd October 2003 as per Death Certificate No 901814
2. The Petitioners filed an application for letters of administration intestate on 18.07.2011 and listed beneficiaries widow and children of the deceased and assets that comprised of deceased's estate and consents by beneficiaries for seeking grant of letters of administration.
3. The grant of letters of administration was issued on 11.10.2011 to Lilian Njeri Kimeu & Kenneth Kimeu.
4. The Petitioners applied to have the grant confirmed vide summons for confirmation of grant on 5.10.2012. The deceased was said to be survived by;
 - a. Elijah Masiaka Son
 - b. Ezekiel Kamau Kimeu Son



- c. Peter Nzuki Son
 - d. Prscilla Nthenya Daughter
 - e. Daniel Muhia Son
 - f. Martin Ndonge Son
 - g. Joel Irungu Son
 - h. Margret Wambui Daughter
 - i. Kenneth Kimeu Son
 - j. Jonah Maina Son
 - k. Wilson Mutua Son
 - l. Ayub Mwangi Son
 - m. Sammy Kavity Son
 - n. Paul Kioko Son
5. The deceased is said to have owned the following properties;
 - a. 1/2 share in LR no. Donyo Sabuk Komarock Block 1/254
 - b. Plot no. 293 MT Farm Pondeni FC Limited.
 6. The grant was confirmed on 16.07.2013 by LJ B. Thurania Jaden and the estate distributed as per the mode of distribution attached to the Summons for Confirmation of grant.
 7. The ½ share of Ol Donyo Sabuk Komarock Block 1/254 registered in the names of deceased Paul Kimeu Masika was distributed amongst widow and children of the deceased as outlined in the Certificate for Confirmation of Grant and Luka Ngomo Masika & Daniel Ndutu to hold the ½ share .
 8. Plot No 293 Mt Farm Pondeni Ltd was to be held by Kenneth Kimeu in trust for other beneficiaries.
 9. The beneficiaries signed written consents to the Summons for Confirmation of Grant.

Summons for Revocation Of Grant

10. Summons for Revocation of grant were filed by Joseph Nzuki Masika, the 1st Objector on 4.06.2014 and on 7.10.2015, Muriithi J granted order that the matter would proceed by way of oral evidence and parties were directed to file their witness statements and list of documents.
11. The gist of the application for revocation of grant is as follows; the deceased Paul Kimeu Masika step-brother to the Objector, Joseph Nziuki Masika were /are Administrators of the estate of their late father William Masika Ngomo who was registered owner of the suit property Donyo Sabuk/Komarock Block 1/254.1 in Succession Cause 2253 of 1996 in the Estate of William Masika Ngomo in High Court Nairobi and annexed is the Certificate of Confirmation of Grant of 5/2/1998 where the said property;Donyo Sabuk/Komarock Block 1/254.1 was distributed into 35 acres in the names of Paul Kimeu Masika & Luke Ngomo Masika 35 acres. The said property was originally Plot 39 A. The Objector Joseph Nzuki Masika was allocated 5 acres and Kaluki Masika 5 acres.



12. The Objectors filed List of Witnesses the Objector's Witness Statement , the Amuunda Clan and Kioko Kimeu stepson of 1st Administrator. Kioko Kimeu and Supplementary List of Documents all filed on 25/11/2015.
13. Lucas Ngomo Masika filed Replying Affidavit on 3/2/2016 and deposed that the deceased Paul Kimeu Masika was his step brother and the Objector Joseph Nzuki Masika was/is also step brother. Their late father William Masika Ngomo called family meeting on 23/9/1989 and the Clan and the adult sons and his wife and they took Kamba oath and he stated how he wanted to distribute his estate.
14. Their late father directed 35 acres of Plot 39 B each to Paul Kimeu and 35 acres to him and the Objector was given 5 acres and his wife Grace 5 acres a few kilometers from them as they had other land allocated to them.
15. The Administrators of deceased's estate Lilian Njeri Kimeu the deceased's widow and her son Kenneth Kimeu through 1st Administrator filed Replying Affidavit to the application for revocation of grant and deposed as follows; the copy of the title Donyo sabuk /Koma Rock block 1/254 marked LNK -1 is registered jointly between Paul Kimeu Masika the deceased herein and Lika Ngomo Masika. Nairobi High Court Succession Cause 2253/1996 estate of William Masika Ngomo (deceased) Certificate of Confirmation of Grant dealt with distribution of the property Plot 39A now Donyo Sabuk /Koma Rock Block 1/254. The Objector herein who was provided for 5 acres did not file for revocation of grant in the said Succession Cause nor contest/protest the distribution of the deceased's father's estate of the said suit property.
16. The 1st Administrator deposed that there no concealment of information or fraudulent processing of the Succession Cause as the issue was dealt with in Succession Cause 2253/1996.
17. On 6/12/2017 Kioko Kimeu the 2nd Objector deposed that that the deceased Paul Kimeu Masika is his biological father and 1st Administrator and 2nd Administrator step mother and stepson respectively carried out the Succession Cause herein proceedings without his knowledge and /or consent as per the copy of Certificate of Grant. The 2nd Objector deposed that the he resides on the property Donyo Sabuk /Koma Rock Block 1/254 and distribution of the estate has not taken place on the ground and the Petitioners are selling off tracts of the said property. The 2nd Objector sought the Petitioners to be restrained and the grant to be revoked.
18. Hearing commenced on 23.10.2018 where OW1 and OW2 testified on 3.12.2019
19. The 1st Objector filed Summons dated 25.08.2020 seeking an order of inhibition to be registered on Parcel 12 No Donyo Sabuk/Komarock Bloc 1/254 by the Land Registrar, Machakos. The same was granted after hearing of the Summons, the order was granted vide a Ruling delivered on 16.12.2020. The order was granted pending the hearing and determination of the application for revocation of grant.
20. The 1st Administrator Lilian Njeri Masika filed Affidavit in Reply on 28/2/2018 and deposed that the 2nd Objector Kioko Kimeu is also known as Paul Kioko Masika was given 1/1/2 acres where he resides on todate. 1st Administrator stated that the estate was distributed as per the deceased's wishes and are reflected in the Certificate of Confirmation of Grant issued on 19/9/2013 and therefore the Objection does not raise any legitimate claim and should be dismissed with costs.

Summons for Revocation of Grant Dated 4.6.2014

21. Before this court is this summons seeking the following orders;



- a. That the confirmed grant issued to Lilian Njeri Kamau and Kenneth Kimeu be annulled/revoked.
 - b. spent
 - c. spent
 - d. costs be in the cause
22. The Summons are supported by the affidavit of Joseph Nzuki Masika sworn on 4.06.2014 in which he deposed they had failed to inform the court that the deceased herein had obtained a grant for the estate of William Masika Ngomo (deceased), the original owner of Donyosabuk/lkomarock Block 1/254 (hereinafter referred to as the suit property) which he held jointly with Luka Ngomo Masika in trust for the estate and the children of the estate.
23. Secondly, that they failed to seek the consent of the beneficiaries of the estate of William Masika Ngomo (deceased) before applying for the grant and have threatened to subdivide the suit property thus disinheriting him. The Applicant averred that he wrote to the Petitioners severally but they failed, refused and/or ignored to see him.

Responses

Affidavit In Reply dated 2.02.2016

24. Lilian Njeri Kimeu deposed that the summons for revocation of grant consisted of falsehoods since the estate in issue is that of Paul Kimeu Masika and not William Masika. It was deposed that Paul Kimeu Masika, Joseph Nzuki, Luka Ngomo Masika and Daniel Masika are sons of William Masika Ngomo and sometime in 23.09.1989 he called all his sons to his home and stated how he wished to have his estate distributed. She deposed that the wife of the deceased and the sons took an oath that they will adhere to his wishes and none will contest his wishes.
25. It was deposed that the suit property was given to Paul Kimeu Masika and Luka Ngomo Masika while the objector was given another land in Koma and a farm at Kawethei area. It was contended that the objector is a trouble maker and has been one since the father in Law was alive, he would beat up his own father, step mother and his own brothers.
26. In addition, when the estate was succeeded vide P & A No 2253 /1996 (Nairobi), the Applicant did not contest the same and her late husband and Luka Ngomo Masika were each given 35 acres in plot number 39 B which was processed, registered and given title Donyo Sabik/komarock Block 1/254. The said grant has never been contested and thus the Applicant has no claim over his brother's property. It was contended that the suit property was not held in trust for the estate of William Masika Ngomo and the Applicant's claims are misleading as he is being selfish.

Affidavit in Reply Dated 2.02.2016

27. Luka Ngomo Masika, a step-brother to the deceased stated that their father William Masika Ngomo called their family together on 23.9.1989 and invited members of the clan wherein he stated his wishes as to the distribution of the estate. He said that all the adult sons, Paul Kimeu, Joseph Nzuki and himself plus his wife took his oath that what he said would be taken seriously. He deposed that he and his brother were given the suit property and were registered as the proprietors. The objector, Joseph Nzuki Masika and their mother Grace were given 5 acres each a few kilometres from their land. The Objector was given another property



28. It was contended that the objector is a trouble maker and has been one since the father in Law was alive, he would beat up his own father to the extent that the police would be called in. He would also beat up their old mother who now walks with a stick because of the objectors beating. It was deposed that the objector was misleading the court and wants to benefit from what was not given to him by their father.

Further Affidavit dated 1.03.2016

29. The Objector contends that Luka Ngomo Masika is his step brother and that when their father died, all his suit properties should have been divided amongst his wives who consequently should have shared with his children. He denied beating his step mother and contended that if there was an issue, it would have been reported to the police. He said that those were issues raised to divert the court attention.

Hearing

This court took over the matter on 25.11.2021 and on 28.4.2022, PW1 gave their oral evidence but was stood down and later recalled on 29.5.2023.

PW2 gave his evidence to the court on 7.1.2023.

Submissions

Objectors Submissions

30. The Objector filed submissions on 25.01.2024 in which it was submitted that Administrators act on behalf of the beneficiaries and are not the owners. That the deceased herein made himself the sole administrator of the estate of William Masika Ngomo vide Succ 2253 of 1996. It was contended that the confirmed grant dated 5.2.1998 was obtained fraudulently without the brother's knowledge or consent and allocated himself the entire portion of Donyo Sabuk/komarock Block 1/254 to the exclusion of the brother. He submitted that the deceased proceeded to allocate 5 acres which were non-existent.
31. The 1st Objector reiterated the contents of his affidavit and further submitted that before the death of the deceased herein, vide agreement dated 19.09.1998 and letter dated 1.10.1998, he had agreed to share out the 35acre with his brother. It was submitted that the suit property belonged to William Ngomo who had two wives. The 1st house had two sons, Paul Kimeu (deceased) and Joseph Nzuki while the 2nd House had two sons, Luka Masika and Daniel Ngomo.

Petitioner's Submissions

32. The petitioner filed submissions on 24.01.2024 and reiterated the contents of his affidavits. It was further submitted that the application does not meet the criteria of Section 76 of the [Law of Succession Act](#), further, that the orders 2 and 3 being sought were granted by Kemei J. on 16.12.2020.
33. It was submitted that the 1st Objector was given 5 acres in plot number 39 in which title no Donyo Sabuk/Komarock Block 1.254 is rooted in succession cause no 2253 of 1996, in the matter of the late William Masika Ngomo.
34. The Petitioner contends that the Objector is not a beneficiary of this estate and seems to only take issue with the manner in which the estate was distributed. Further, that he has no locus to seek revocation of the grant. In addition, the allegation that half of the suit property was held in trust for him was not supported by any evidence.



35. The Petitioner contends that what the 1st Objector is asking the court is to sit on appeal of a judgment of court of concurrent jurisdiction as Plot 39 B Also Known As Donyo Sabuk/Komarock Block 1/254 was already distributed . Paul Kimeu Masika & Luka Ngomoa Masika were registered as the absolute owners of the suit property on 5.05.1998 and the deceased died on 23.10.2003 and his half share was never disputed.

Analysis & Determination

36. This Court perused the pleadings /applications filed and responses submissions exchanged after oral evidence was adduced in Court.
37. The issues that emanate for determination are based on applications for revocation of grant by Objectors as follows;
- a. Whether the 1st Objector Joseph Nzuki Masika’s ground for revocation of grant that the suit property Plot 39 B Also Known As Donyo Sabuk/komarock Block 1/254 belongs to the estate of William Ngomo and ought to be distributed to the beneficiaries of their late father’s estate and not the present family of Paul Kimeu Masika.
 - b. Whether the 2nd Objector’s objection to the grant and confirmation of grant as son of the deceased herein was not consulted and did not give consent to the administration and distribution of the estate of the deceased Paul Kimeu Masika.
38. This Court derives jurisdiction apart from Article 165 of *CoK* 2010; to administer and distribute the estate of the deceased from LSA which is an Act of Parliament to amend, define and consolidate the law relating to intestate and testamentary succession and the administration of estates of deceased persons; and for purposes connected therewith and incidental thereto According to Section 3 (1) of the *Law of Succession Act* Cap 160 Laws of Kenya (LSA), which means the free property of a deceased person.

34. Meaning of intestacy

A person is deemed to die intestate in respect of all his free property of which he has not made a will which is capable of taking effect.

35. Where intestate has left one surviving spouse and child or children

- (1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—
 - (a) the personal and household effects of the deceased absolutely; and
 - (b) a life interest in the whole residue of the net intestate estate:

40. Where intestate was polygamous

- (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.
- (2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38



76. Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.

Case-law

39. In the case of *Rono v Rono* Civil Appeal No. 66 of 2002, where Waki JA stated inter alia that;-

“More importantly, section 40 of the Act which applies to the estate makes provision for distribution of the net estate to the “houses according to the number of children in each house, but also adding any wife surviving the deceased as an additional unit to the number of children.”

In the Matter of *Re Estate of Benson Ndirangu Mathenge(deceased)* Nakuru HCSC NO. 231 of 1998(Ondeyo J), the deceased was survived by his two widows and their children. The first widow had four children, while the second widow had six children. The court stated that the first house was comprised of five units while second had seven units. The two houses of the deceased combined and looked at in terms of units made up twelve units. The court distributed the estate to the children and the widows treating each as a unit. The land available for distribution was forty acres, which was divided by the court into twelve units. Out of the twelve units, five were given to the first widow and her four children, while the remaining seven units went to the second widow and her six children.

Further, In the Matter of the Estate of Nelson Kimotho Mbiti(deceased) HCSC NO.169 of 2000, Koome J directed that the estate of a polygamist be divided in accordance with the provisions of Section 40 of the Act. The estate was divided into units according to the number of children in each house with the widows being added as additional units

Consequently, in the Matter of the Estate of the Joseph Eric Owino (Deceased) Succession Cause (P&A) No.58 of 2020, R Nyakundi J at paragraph 12 observed that, in a case of this



nature where the deceased died intestate and was a polygamous man survived by two widows and children the anchor on distribution of his estate is

See also; *Re Estate of John Musambayi Katumanga – Deceased* [2014] eKLR & *Matter of the Estate of Zablon Komingoi Mateget* Succession Cause No.220 of 2014

Distribution of the Estate of Paul Kimeu Masika (deceased)

40. Applying the principles that govern administration and distribution of estates of the deceased, in the absence of valid Will of the deceased and/or appointments of nominees by the deceased of his/her benefits upon demise, the estate is deemed in law as intestate and hence Section 51 of *LSA* Rule 41 *Probate & administration Rules* Section 66 of *LSA* and 71 *LSA* among others apply.
41. The property at the center of the dispute herein is Plot 39 B Also Known As Donyo Sabuk/komarock Block 1/254 was already distributed . Paul Kimeu Masika & Luka Ngomoa Masika were registered as the absolute owners of the suit property on 5.05.1998 and the deceased died on 23.10.2003 and his half share was never disputed.
42. The said property was originally in the name of William Masika Ngomo the deceased Paul Kimeu Masika and Objector Joseph Nzuki Masika late father.
43. William Ngomo who had two wives. The 1st house had two sons, Paul Kimeu (deceased) and Joseph Nzuki while the 2nd House had two sons, Luka Masika and Daniel Ngomo. The 1st Objector deposed in his Affidavit that their father had 17 children and listed them.
44. The Succession Cause 2253 of 1996 Nairobi High Court was/is in the Estate of William Masika Ngomo where proceedings culminated with Certificate of Confirmation of Grant distributing Plot 39B now Donyo Sabuk/Komarock Block 1/254 as follows;
Paul Kimeu Masika -35acres
Luke Ngomo Masika- 35 acres
Kaluki Masika-5acres
Joseph Nzuki Masika -5 acres
45. There was no Objection filed before grant was issued Protest before grant was confirmed on list of beneficiaries, List of assets and proposed mode of distribution with written consents of All beneficiaries. There was no/has not been revocation of that grant and confirmed grant of rectification or redistribution of grant since then to date in the Succession Cause.
46. Every Court is moved by parties directly or through Counsel by filing pleadings which the Court considers against the relevant law and facts in making decisions. Subsequently, the Succession Cause relates purely with and Dealt with the estate of William Masika Ngomo's estate and the instant Succession Cause addresses the estate of Paul Kimeu Masika's estate. Therefore, any anomaly Discrepancy or grievance on distribution of Plot 39B now Donyo Sabuk/Komarock Block 1/254 in Succession cause 2253 of 1996 this Court properly intervene, the dispute remains within that file and Court unless further orders are granted.
47. The 1st Objector, Joseph Nzuki Masika was allocated 5 acres of their late father's property 39B and the certificate of Confirmation of Grant Succession Cause 2253 of 1996 has not been revoked. All complaints shall be directed/placed in the said file.



48. The 2nd Objector Kioko Kimeu is son of Paul Kimeu Masika Deceased and the Deceased had 2 wives and/or 2 houses, the 1st and 2nd Administrator Lilian Njeri Kimeu & Kenneth Kimeu are 2nd wife/widow and her son respectively.
49. Kioko Kimeu complains that he was not consulted he did not consent to taking of letters of administration and proposed mode of distribution in the Summons for Confirmation. The Petitioners reply is to the effect that Kioko Kimeu and Paul Kimeu Masika Kimeu are one and the same person and he was provided for 11/2 acres.
50. The Deceased did have any Will the estate was/is intestate. The Petition Affidavit in Support & Consent to the making of grant for letters of Administration filed 18/7/2011, Kimeu Kioko alias Paul Kimeu Masika is not listed and he did not sign consent.
51. In Summons for Confirmation of Grant filed on 5/10/2012 he is listed Paul Kioko and Paul Kioko Masika 11/2 acres but he did not sign consent to mode of distribution . He was not informed consulted and did not give consent to grant issued and confirmation of grant.
52. Of concern to the Court it is not contested that the deceased Paul Kimeu Masika had 2 wives 2 houses yet the Administrators of the deceased's estate mother and son were/are from I house.
53. Secondly, it is strange that the Objector either by design or default never testified in Court despite filing statement and application for revocation of grant.

Disposition

1. The grant issued on 11/10 /2011 is hereby revoked and under Section 66 LSA new grant in names of Kenneth Kimeu representing 2nd house and Kioko Kimeu alias Paul Kioko Kimeu representing 1st house.
2. The confirmed grant of 19/9/2013 is hereby revoked Family members of deceased Paul Kimeu Masika to mediate on distribution of the estate.
3. The family Administrators Advocates may pursue Court annexed mediation by engaging DR MHC for screening and Court Annexed mediation.
4. Each /any/all beneficiary administrator interested party Purchaser or 3rd Party s on the suit property Plot 39B now Donyo Sabuk/Komarock Block 1/254 shall remain in situ and rights protected under Section 93 LSA pending distribution of the estate equally /equitably amongst the beneficiaries of the deceased's estate.
5. Joseph Nzuki Masika Masika is not one of the beneficiaries of the estate of Paul Kimeu Masika his claim is in Succession Cause 2253 of 1996
6. There shall be no demolition, ejection, blockage or hindering of access use occupation or cultivation as is ongoing presently, status quo shall be maintained on property Donyo Sabuk/Komarock Block 1/254.
7. The Ruling and Court order of inhibition by D.K. Kemei J of 16/12/2020 remains in force.
8. Parties to file Summons for Confirmation within 6 months of issuance of the new grant.
9. Any aggrieved party is at liberty to file and apply to Court for orders.

JUDGMENT DELIVERED SIGNED & DATED IN OPEN COURT AT MACHAKOS HIGH COURT ON 31/5/2024 (VIRTUAL/PHYSICAL CONFERENCE).



M.W. MUIGAI
JUDGE

