



**In re Estate of Murunga Kisosi (Deceased) (Succession Cause  
E026 of 2022) [2024] KEHC 6203 (KLR) (24 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6203 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE E026 OF 2022  
PJO OTIENO, J  
MAY 24, 2024**

**BETWEEN**

**FRED BURUDI MURUNGA ..... 1<sup>ST</sup> PETITIONER**

**ALICE SHIUNDU MURUNGA ..... 2<sup>ND</sup> PETITIONER**

**AND**

**MAURICE JOMO SHIKHUTULU ..... OBJECTOR**

**JUDGMENT**

1. By a joint Petition for grant of letters of administrate intestate, filed in Court on the 3.10.2014, Jackson Sikolia Murunga, Fred Burudi Murunga and Alice Shiundu Murunga, sought to be appointed the administrators of the estate of the deceased who was said to have died on the 6.5.1993.
2. The three identified themselves sons and a daughter to the deceased, named nine (9) people, two of whom were then deceased, as the survivors to the deceased and named the only property of the estate to be Kakamega/Lumakanda/156 measuring 6.1 Ha. However, to the Petition two Certificates of Official Search were exhibited including another title number No Kakamega/Matsakha/848. The two Certificates show that while 844 was registered in the name of the deceased, 156 was in the name of Settlement Fund Trustees.
3. The three were appointed administrators and their grant was thereafter confirmed on the 30.11.2018. From the Certificate of Confirmation of grant, it appears that the estate was distributed to seventeen (17) individuals and the shares so given were agreed upon by consent as disclosed in the Consent to distribution dated 5.06.2018.
4. By Summons for revocation of grant dated 22.01.2020, the Objector, Maurice Jomo Shikhutuli sought to have the grant revoked and annulled on the grounds that of the proceedings pursuant to which it was obtained were improper, irregular and defective in substance; that the same was obtained fraudulently by way of false statements and concealment of material facts concerning the heirs to the deceased in that



the Objector was not acknowledged as a grandson and heir and lastly, that the process was conducted secretly.

5. The said facts were reiterated in the Affidavit in support sworn by the Objector in which he contended that his father, one Nathan Shikhutuli, was a son to the deceased. To prove that fact he exhibited an alleged copy of the eulogy of the deceased, a letter allegedly inviting him for a meeting at which he was shown where to built pursuant to which meeting he built and took possession of the land; a document by which he alleges to have contributed Kshs 40,000.00 on 19.7.2008 given same to one Sikolia Murunga towards pursuit of the Succession Cause and an application to lodge a caution over the parcel of land number North Kabras/Matsakha/848. The documents were marked MJS 1-4.
6. He reiterated having been kept in the dark till 2019 when he was served with court papers by the administrator for an order of eviction in Butali MCL No 39 of 2019.
7. That application for revocation of grant was resisted by the administrators on the basis of a Replying Affidavit sworn by Alice Shiundu Murunga. The gist of the opposition was that the Objector lacks locus to bring the same; that the Affidavit in support of the objection is full of falsehood calculated to mislead the court and pervert the course of justice for reasons that the Objector has no iota of relationship with the deceased and was otherwise a trespasser and an intermeddler in the estate. On the basis of not being related to the deceased, the administrator contends, he had no right to be notified nor involved in the administration of the estate.
8. Beyond the denial of the alleged relationship, the administrators add that the alleged eulogy was unknown to the family just as much as there was no invitation alleged in the Affidavit in support of summons for revocation of the grant.
9. That the Objector was invited into the deceased's land was denied it being added that in accordance with the traditions, the family met on the third day after burial of the deceased, to deliberate on the deceased's property, when it was established and agreed that the deceased was survived by only five (5) sons and the alleged Nathaniel Shikhutuli was no one of the sons.
10. There was a further contention and assertion that the Objector's father and all relatives of the Objector who have passed on were all buried on their ancestral home at Shamberere on the basis that the Objector's father was the son of one Lumati Chisomi and that the brothers to the said Lumati Chisomi including one Thomas Anyanga know the Objector as their nephew.
11. On how the Objector entered and took possession of the land, the administrator contend and assert that the family allowed the Objector as a caretaker of the estate to use a portion measuring one acre for cultivation and to pay himself from his produce. On the allegations that the Objector contributed to the costs of succession cause was denied it being added that the Objector has his own three (3) parcels of land and had not acquired the estate land by adverse possession. On those facts, the Petitioners pray and urge that the objections be disallowed and the Objector adjudged no relative to the deceased.
12. On the 13.10.2022, when both Counsels addressed the court, directions were given that matter proceeds by way of viva voce evidence pursuant to which directions the Objector called four (4) witnesses while the Petitioner called five (5). The said witnesses relied on the filed witness statements as evidence in chief and were cross-examined.
13. When the Objector gave evidence as OW1, he relied in his witness statement and produced the bundle of documents in the list dated 6.4.2021. That list included a hand written document said to be the eulogy of the deceased, sub-division sketch, a letter attributed to Jackson Sikolia Murunga acknowledging Objector as a nephew and a document written in Luhya language and not translated. The written statement and the documents contend that the Objector was indeed a grandson to the



- deceased by virtue of being a son to one Nathan Shikhutuli, the first son to the deceased and that he had been acknowledged by being invited to be shown what portion of the land to occupy and being asked to contribute towards the costs of the Succession Cause.
14. OW2, was Ainea Musungu who described himself as a cousin to the deceased and said that he knows the Objector as a son to one Nathan Shikhutuli who was a son to the deceased by a lady who left with him. He said was only told some of the things by one Joseph Murunga. He said that he attended the deceased's funeral but did not see the Objector. He remembered that there had been a push from the family to have the Objector vacate the estate land. On dowry, he said the deceased paid dowry but he was not aware what animals were given.
  15. OW3 was Ernest Orutse Liduisa, who introduced himself as a maternal uncle to the Objector and asserted that his sister was married to the Objector's father by payment of his cows in the period between 1957 and 1958.
  16. OW4 was, Jackson Lumbasi Lutatwa a retired teacher and cousin to the deceased by virtue that both shared a grandfather. He said that the Objector was invited to the land by the deceased's sons so he takes care of it pending inheritance and he was notified by the letter written by Jackson Sikolia. He confirmed having authored the letter acknowledging payment of Kshs 40,000,00 towards succession cause but admitted that no cause was filed till Sikolia died. He then confirmed having received the letter dated 5/01/2005 by Sikolia to the Chief and asking the Chief to protect the Objector from interference by the grandchildren.
  17. On being cross-examined he reiterated having written the document dated 19.06.2008 but also admitted that the identity card number assigned to Sikolia differed with the known identity card number. He also admitted that the letter dated 5/01/2005 was never signed by Jackson Sikolia and that the deceased had a land dispute with Mapesa which could have led to him moving to the Scheme. His evidence marked the lose of the Objector's case.
  18. For the administrators, Alice Shiundu gave evidence as PW1 and denied any blood relationship or dependency by the Objector and the deceased. She reiterated that the objection was invited to the land as a caretaker who would pay himself from the proceeds of his produce cultivated on the land. She said the deceased had nine (9) children who were able, by their own to meet the costs of pursuing succession. She then referred the court to the Petition in Succession Cause No 170 of 1988 which did not show Nathan Shikhutuli as a son to the deceased. She then relied on the documents filed which she produced as exhibits and underscored the contents of the letter dated 9.12.2008 demanding that the Objector vacates the land, Minutes of family meeting which did not recognize the Objector as a dependant and the Chief's letter of introduction in this cause. There was a stress that the identity card number attributed to Jackson was not his but a forgery.
  19. On being cross-examined, the witness told the court that the deceased had always owned the parcel of land at Matsakha and had let out the subject land to the people for purposes of grazing which people continued to pay rent to the widow till the widow died in 2001 after which the family of Mapesa encroached on the land hence the need to get a caretaker.
  20. The witness discounted the evidence of Inea Musungu for reasons that he was too young having been born in 1953, to have taken the deceased to pay dowry. He contended that looking at the ages of the deceased and the Objector's father, the deceased could not have sired the Objector's father who was just sixteen (16) years his junior. He stressed that circumcision was conducted at between 18 – 20 years and the deceased could not have married before undergoing the rite.



21. On the allegation in the letter of 13.12.2002, the witness termed same a forgery and asserted that the author could not validly deal with the estate property before a grant was issued in his favour. He also denied being a member of Mutabakwa Welfare Association or clan.
22. On why other distant relatives like Inea could support the objection against the family, the witness told the court that his family is considered outcasts on account of the fact that the grandfather killed a cousin and the distant relatives would rather the land gets into the hands of a stranger and not the true owners.
23. In the cause of the trial, the court asked parties if the Objector was amenable to DNA testing but Mr. Ondieki vehemently protested said his client was not so amenable.
24. PW2, Moses Kenyatta Sikolia described himself as the son of Jackson Sikolia (deceased), thus the eldest grandson to the deceased. He confirmed knowing the Objector as a caretaker of the estate land. He said the deceased had issue with his cousins including Mapesa Lumbasi whom he sued over the land and succeeded hence the support by Mapesa family and relatives for the objection is out of spite. He also termed the letter attributed to his father as forgeries. He denied that his grandfather had other wives with whom he sired children apart from the grandmother.
25. The third witness for the administrator was Juma Inzai, the area Chief who knew both parties well. He said that the Objector had informed him to be the caretaker of the land when a boundary dispute was raised. He reiterated that the deceased never had cordial relationship with his cousins and thus relocated to Lugari from Matsakha. During his tenure as the Chief he received complaint from the family of the deceased over occupation and use of the land by the Objector and that when he summoned both side for negotiations, the Objector declined and told him the case was too big for him to handle.
26. On being cross-examined, he told the court that he handled land dispute between the Objector and one Sakwa during which the Objector described himself as a caretaker.
27. The fourth witness on the side of the Petitioner was, Caroline Murunga Juma, the County Registrar of Persons whose sole task was to produce the registration records for the Objector. His evidence was that the Objector was a son to one Nathan Shikutuli who hailed from Shamberere Sub-location of North Kabras in Kakamega North Sub-county. On being cross-examined, nothing material arose on the validity and authenticity of the documents produced save that the document did not reveal who the Objector's grandfather was.
28. The last 5<sup>th</sup>, witness to testify for the Petitioners was George Mukunga Maina, the Chief Shianda Location whose evidence was that the Objector no longer reside in his location. He also said that he did not know the father to the Objector who died before he was born but he knew his family based on history as narrated in the witness statement filed.
29. With the production of evidence closed, parties were directed to file submissions. Both sides did comply with the Objector's submissions having been dated 19.12.2023 and filed the next day while those by the Petitioner were dated 9<sup>th</sup> October, 2023.
30. The court has had the opportunity to peruse both, choses not to rehash same but appreciates the positions of the law and evidence captured by both.
31. Being an objection based on failure to disclose to court the existence of the Objector and his interests in the estate as a grandson to the deceased, the sole issue for determination is whether the Objector is indeed a grandchild as asserted.



32. If a grandson, whether or not he was a dependant of the deceased arises not. To reach that conclusion there ought to be evidence of paternity between deceased and Objector's father. To this court whether one is a child to the deceased for purposes of succession, may be established by evidence on paternity or evidence that the person was adopted or taken in by the deceased as his own. Here, what is alleged is biological relationship between Objector's father and the deceased.
33. The entire evidence by all the nine witnesses called did not shed light on what relationship existed between the deceased and the Objector's father when both lived. No evidence was led to shed light on whether from childhood to the date of Objector's father's death, when aged 58 years, the two ever kept any contact. Even OW2, 3 and 4 who supported the Objector's case never made any attempt to explain whether in his lifetime the Objector's father never sought any provisions from the deceased just as nothing was said if the deceased in his life time, after the death of the Objector's father, ever recognized or acknowledged the Objector as a grandson and by extension that his father was a son.
34. The evidence by the Objector's side is not coherent on possibilities of the Objector's grandmother having been married or having been intimate with the deceased. It is more of a knitted conjecture largely founded on the evidence of OWD2 who was at least forty (40) years younger than the deceased and who assert to have participated in dowry payment. From the evidence by that witness, he could have been born around 1940 well after the first born of the deceased, father to PW2, had been born.
35. If he indeed participated in the dowry payment, the event would have taken place around 1960, after he attained age of majority. It begs the question if the deceased cohabited with the administrator's mother for more than twenty (20) years before paying dowry. The court doubts that to be believable.
36. With that state of evidence, the court was surprised at the vigour with which the Objector's side resisted the prospects of DNA testing as a way to prove paternity. The court also takes it that with records at the National Registration Bureau, it was impossible to get registration details of the father to the Objector, just like the Petitioner availed those for the Objector, to establish if indeed a relationship between him and the deceased was so acknowledged. That was equally not done with the obvious consequence that there was no credible evidence to prove that the Objector was a grandson to the deceased.
37. In the court's assessment, paternity of the Objector's father was never proved and linked to the deceased yet the burden squarely laid with the Objector. Without proof of paternity, the Objector failed to prove his right to notified under Section 66 as read with part V of the Act. His father was not a child and a person entitled to inherit from the deceased. If his father was not so entitled, he has no basis to inherit through his said father.
38. The inevitable conclusion is that the Summons for revocation of grant fails and the same is dismissed with costs. I do grant costs in an otherwise family matter because to the court the Objector is a stranger to the estate and ought not to have pursued the matter at all.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 24<sup>TH</sup> DAY OF MAY, 2024.**

**PATRICK J. O. OTIENO**

**JUDGE**

In the presence of:

Mr. Khayumbi for the Petitioner

Mr. Shiloya for Akwala for Objector

Court Assistant: Polycap

