

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. 895 OF 2010
IN THE MATTER OF THE ESTATE OF MUKEKU
NGOLANIA alias MUKEKU NGOLANYA alias MUKEKU
NGOLANYIE (DECEASED)

WANZA GEORGE1ST

APPLICANT

LITIA NTHENYA MUTHOKA

2ND APPLICANT

MWANZA MUKEKU3RD

APPLICANT

KANINI MUKEKU4TH

APPLICANT

VERSUS

CATHERINE MUMO MUKEKU1ST

RESPONDENT

MARY SYOVATA MUKEKU2ND

RESPONDENT

JIMMY MULANGO MUKEKU3RD

RESPONDENT

SIMON MUINDI MUKEKU4TH

RESPONDENT

JUDGEMENT

1. Before the Court is a Summons for revocation or annulment of grant dated 26/07/2023 seeking the following orders;

“a. Spent

b. That the confirmed grant issued to ELIZABETH WAUSI MUKEKU (Deceased) be revoked on account of concealment of some of the beneficiaries of the estate of MUKEKU MGOLANIA.

c. THAT upon grant of prayer 2 above, this Honourable court be pleased to cancel title deeds in respect of Kangundo/Isinga/1239, Kangundo/Isinga/1437 and Kangundo/Isinga/1234 registered in the name of Elizabeth Wausi Mukeku (Administrator) for the same to revert to the Late Mukeku Ngolania for redistribution to the rightful beneficiaries.

d. That the costs of this application be borne by the Petitioner/Respondents.”

2. The Summons were supported by the affidavit of Wanza George who contended that the deceased was polygamous and Elizabeth Wausi Mukeku was one of the wives and she passed away on 24/12/2022. Further, that the Respondents obtained the certificate of confirmation of grant without involving all the beneficiaries and registered the properties of the estate in the name of the administrator; that she concealed material facts and failed to disclose all the beneficiaries of the estate of the deceased. It was deposed that the Respondents are now trying to disinherit the Applicants by selling, subdividing and transferring the

properties including threatening one of the applicants with eviction.

3. On 7/11/2023, the court under section 66 of the Law of Succession Act appointed Jimmy Mulango Mukeku, son of Elizabeth Wausi Mukeku as Administrator of the estate on behalf of ALL beneficiaries and compromise the application 26/7/2023.

4. On 02/05/2024, Muigai J directed that all the properties in the Certificate of Confirmation of Grant of 17/07/2015 revert back to the names of the deceased herein until the summons for revocation application is heard and determined. This was emphasized by the orders of the court issued on 24/10/2024 that inter alia preserved the properties of the estate of the deceased under Section 45 Law of Succession Act.

5. The compromised Application was determined via viva voce evidence and thereafter parties were directed to file submissions.

6. PW.1 was MWANZA MUKEKU who testified that the estate is that of her father and that the funeral program of the late Elizabeth Wausi Mukeku names all children of deceased mother and father. She stated that she lived on my father's land to date and her ID Card has her father's name. she

also stated that they were brought up by Mukeku, her mother was the 1st wife and the 2nd wife was born while pregnant with the administrator. That Mumo and the 2nd bother were not the biological children of the deceased herein. She stated that Title deed 1437 is not in the name of Syombua but Mukeku and according to the Certificate of Official search Kangundo/Isinga/1432 belonged to Syombua Mulwa, the mother. He testified that 1239 is part of deceased's estate. He did not know when his mother was married and that the deceased lived with us until his death in 1980 when he died. The 2nd widow Elizabeth Wausi Mukaa was married in 1962. She came with you and 2 older siblings and only Simon who was born. He indicated that he did not know Mulwa and did not have another father save for the deceased herein.

7.PW2-Patrick Ndunda Wambua stated that the deceased herein was like a father to him and he only had one wife who was Syombua Mukeku, the mother of the Applicants in this case. Jimmy Mulango Mukeku is the son of Mukeku Ngolanya's second wife, Wausi. That Mwanza Mukeku resides on land belonging to Mukeku. He stated that Francis Mwanza is married to my mother's sister. He stated that when Wausi got married to Mukeku she was already heavy with child.

8.PW3 was Kalunda Kyengo who testified that Mukeku and his father are brothers. He stated that he left Kilungu in

the year 1934 and went to Kangundo where he found Mukeku and Syombua. he told the court that their children were Kitonyi Mukeku, Kawinzi Mukeku ,Mwanza Mukeku and Kanini Mukeku who were brought up by Mukeku that Ngolanya's siblings were Paul Simu and Marcel Ndambuki. He did not know Mulwa is the brother of Mukuku or if there is a grave for Mulwa in that homestead. He told the court that Mukeku and Syomboka are buried in the same place. He stated that Syombua was Mukeku's wife. He knew Syombua Mukeku and not Syombua Mulwa.

9.PW4 Raphael Muisyo Kitonyi, stated that he is the son of Kitonyi who is son of Mukeku. That Mukeku had two wives and he is a grandchild from the house of the first wife. He told the court that Joseph Kyalo Kitonyi is his brother. He had never seen Mulwa and only heard that he is first born in that family from several people. He further stated that Syombua is his grandmother and he heard that Mulwa was elder brother to Mukeku, Simu and Ndambuki. He testified that Mukeku and Syomboka are not buried in the same place; Syomboka was buried in the land he used to cultivate.

10.RW 1 was Jimmy Mulango Mukeku who told the court that his late mother was Elizabeth Wausi, the wife/widow of the deceased and his siblings were Catherine Mumo (deceased), Mary Syoveta Mukeku and Simon Muindi

Mukeku and Elizabeth Wausi. He stated that his mother did not inform them of any other mother/wife/widow or 1st house of Ngolania Mukeku (deceased) but told them that Syombua's family was of Mulwa 1st born of Mukeku Ngolania family. When their grandfather Mulwa died, the deceased herein brought them up as children of his late older brother. That they took the name of his father when they obtained ID cards. That his mother was buried next to the deceased herein and not Syombua. He questioned why only the protestor was asking for property among his siblings. He stated that his father died 40 years ago and now is when we are being asked about the same yet they did not ask when his mother was alive. He stated that the chief's letter signed by Assistant Chief Henry Kilonzo of 3/7/2023 indicated that the deceased had 2 wives/widows and the letter brought by his mother was that of chief Athanas M Senga all of Kangundo location.

11.RW2, Joseph Kyalo Kitonyi, a grandson of the deceased herein stated that the deceased was not father to the Applicant. He stated that the deceased herein brought up his father and all his siblings and that Syombua was not the wife of Mukeku but of Mulwa. When Mulwa died Mukeku took Syomboka as his wife. He brought up all her children until they grew up. After that he told them they were Mulwa's children when their father's land was distributed into four portions. Mukeku told them to go to Mulwa's

portion and that is where they went and left Mukeku's land which is where Syomboka is married as indicated in the certificate of search. He further testified that all the Applicants obtained IDs using Mukeku's name.

12.The parties proceeded to file submissions and at the time of writing this ruling, the Applicant had not filed submissions. On the other hand, the Respondent filed submissions on 15/05/2025 and submitted that the deceased herein had only one wife, Elizabeth Wauni Mukeku and that he 2nd born in the family of Ngolania and his brothers were Mulwa Ngolania being the one born together with Simu Ngolania and Ndambuki Ngolania.

13.That Mulwa Ngolania who was the 1st born in our father's family and was married to Syombua and had five sons namely Kitonyi Mukeku, Mwanza Mukeku, Kanini Mukeku, Kawinzi Mukeku and Muendo Mukeku and after the death of Mulwa Ngolania, his father and mother took responsibility of bringing up the family of their late brother as to the norms and rites of Kamba tradition, whereby the siblings obtained National Identity cards using my father's name which was not an issue by then. In 1965 surveyors demarcated the land of Ngolania and sub-divided it for the four sons and a portion of land being land parcel No. 1432 of Mulwa Ngolania was allocated to Syombua Mulwa.

14. It was submitted that the Applicant's mother was buried in her husband land parcel no 1432 and the deceased herein was buried with his wife in the land parcel No. 1239. Meaning that if at all Syombua was wife of Muokeku she should have been buried in the estate of Muokeku Ngolania.

Analysis

15. The court has considered the Summons for revocation of grant as well as the evidence on record and the questions for determination are;

a. Whether the grant confirmed should be revoked

b. Whether the title deeds in respect of Kangundo/Isinga/1239, Kangundo/Isinga/1437 and Kangundo/Isinga/1234 should be cancelled.

16. Revocation of grant is provided for under **Section 76 of the Law of Succession Act, Cap 160, Laws of Kenya** which provides that;

“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.”

17. The Applicant's case is that the Respondent failed to disclose that there was a first family. The burden of proof lay with them to prove that that is the position. From the record, there are three letters from three chiefs of the same location. From the letter from the chief Bethwell M.

Kingele dated 04/11/2024, the deceased herein had two wives, each having four children listed as follows;

a. Late Syombua Mukeku was the mother of Kitonyi Mukeku (deceased), Kawinzi Mukeu (deceased), Mwanza Mukeku and Kanini Mukeku

b. The late Wausi Mukeku was the mother of Catherine Mumo Mukeku (deceased), Mary Syovata Mukeku, Jimmy Mulango Mukeku and Simon Muindi Mukeku.

18. The letter dated 3/7/2023 indicates that he had two wives but the first wife is said to have had 7 children being Kitonyi Mukeku (deceased), Kawinzi Mukeu (deceased), Mwanza Mukeku, Kanini Mukeku, Liita Nthenya Muthoka, Mvendo Mukeku (deceased) and Wanza Mukeku while the second wife had four children.

19. From the Petition of letters of Administration Intestate dated 26/08/2010, there was no declaration that there were two families and only the children of the first family. The letter from the chief attached to the Petition also makes reference to only one wife, that is; Elizabeth Wausi Mukeku.

20. None of the parties called the chief to testify on the true position of the estate according to the records. I therefore find that the letters of the chief are unreliable and thus this court will not make reference to them.

21. From the oral testimony, on a balance or probability, the evidence tilts in support of the Respondent. The Applicants did not produce their birth certificates to prove that they were children of the deceased, an identity card would not suffice as names can be similar. In addition, the Applicants did not deny that their mother was buried in was buried in her husband land parcel no 1432 and the deceased herein was buried with his wife in the land parcel No. 1239. They did not also contest the evidence that they had already been allocated four portions that the sons had settled.

22. What has come out is that the deceased took care of the Applicants and courts have rendered themselves on this issue by stating that providing for a child doesn't convert such child into the son of the deceased with a direct beneficial interest and right to his estate. This was the finding of the court **In re Estate of Virginia Wanjiku Githuka (Deceased) [2021] eKLR**, where the court held that;

"Be that as it may, not all the raising of such children gives them rights to inherit from the deceased relative unless as provided by the law they can demonstrate dependence. It is not tenable that by merely fostering a child the child acquires rights to inherit. This would create problems and create a challenge for people who just want to assist children in need."

23.As regards the estate properties, from the copies of search on record, the suit properties are registered in the name of Mukeyu Ngolanya and were all registered on 3/3/1978. This was also reflected in the documents attached to the Petition for letters of administration. No cogent reason or evidence has been given before this court to cancel the said titles.

24.As such, the summons are found to be without merit and the same is dismissed.

25.This being a family matter, each party shall bear its own costs.

Judgment read, signed and delivered virtually this 14th day of November, 2025.

E. N. MAINA

JUDGE

IN THE PRESENCE OF:

Mr. Munguti for the Applicant

Jimmy Mukeyu - Administrator

Geoffrey - court assistant

ORIGINAL