



REPUBLIC OF KENYA



In re the Estate of Sabina Wanjiru Kuguru (Deceased) (Succession Cause E1300 of 2021) [2024] KEHC 9659 (KLR) (Family) (26 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9659 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE E1300 OF 2021

H NAMISI, J

JULY 26, 2024

IN THE MATTER OF THE ESTATE OF SABINA WANJIRU KUGURU (DECEASED)

RULING

1. Before the Court is Chamber Summons dated 21 May 2024 brought under Section 70 of the *Law of Succession Act* and rule 49 of the *Probate and Administration Rules*, seeking the following orders:
 - i. That the listing of the estate assets and liabilities and values thereof in the application for Grant of Probate be dispensed with;
 - ii. That the costs of the application be provided for
2. The application is supported by the affidavit deponed by the Executors and premised on the grounds that the dispensation is in the best interests of the estate and beneficiaries, and that there will be no prejudice caused to any third party if the orders are granted.
3. In their Supporting Affidavit, the four Executors have deponed that the listing of assets in the application for Grant of Probate will expose the family to undue publicity that would be prejudicial to the applicants as it would expose the applicants to unscrupulous persons wishing to cause them harm.
4. I have considered the Application. I note that the provisions of law cited by the Applicants, particularly section 70 under which this application is brought, relates to the powers of the Court. Section 70 provides as follows:

Whether or not there is a dispute as to the grant, every court shall have the power, before making a grant of representation –

- a. Examine any applicant on oath or affirmation; or
- b. Call for further evidence as to the due execution or contents of the Will or some other Will, the making of an oral Will, the rights of dependants and of



persons claiming interests on intestacy, or any other matter which appears to require further investigation before a grant is made; or

- c. Issue a special citation to any person appearing to have a reason to object to the application.

5. Rule 7(1)9d) of the *Probate and Administration Rules* provides as follows:

7(1). Subject to the provisions of sub rule (9), where the applicant seeks a grant of representation to the estate of a deceased person to which estate no grant or no grant other than one under section 49 or a limited grant under section 67 of the Act has been made, the application shall be by petition in the appropriate form supported by an affidavit in one of Forms 3 to 6 as appropriate containing so far as they may be within the knowledge of the applicant, the following particulars

–

- (d) A full inventory of all his assets and liabilities at the date of his death (including such, if any, as may have arisen or becomes known since that date) together with an estimate of the value of his assets movable and immovable and his liabilities.”(emphasis mine)

6. The wording of the Rules is very clear as to the requirements in a petition for Grant of Probate. I have perused the Act and the subsidiary legislation to find a provision conferring powers upon the court to dispense with these requirements. Similarly, the Applicants have not referred this court to any such provisions.

7. In the absence of legal provisions enabling this Court to dispense with this legal requirement, and based on the fact that the only reason stated for the request is that the family will be exposed to undue publicity and unscrupulous persons, I decline to grant the orders sought.

8. The Application is, therefore, dismissed.

DATED AND DELIVERED AT NAIROBI THIS 26 DAY OF JULY 2024

HELENE R. NAMISI

JUDGE

Delivered on virtual platform in the presence of:

.Ms. Kenduiwo H/b Mr. Gachuhi.....for the Applicant

