



**In re Estate of Wasere Ogasia Omanje (Deceased) (Civil Case
9 of 2023) [2024] KEHC 13268 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13268 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CIVIL CASE 9 OF 2023
DK KEMEL, J
OCTOBER 30, 2024
[FORMERLY KISUMU SUCCESSION CAUSE NO 120 OF 2015]
IN THE MATTER OF THE ESTATE OF WASERE OGASIA OMANJE (DECEASED)**

BETWEEN

RICHARD OKETCH UMANI PETITIONER

AND

ROBERT OTIENO OMANJE OBJECTOR

RULING

1. The Objector herein has filed an application dated 30/1/2024 principally seeking for an order compelling the Chief of North Gem Location one Maurice Otieno Amburo to write an introductory letter and indicating the beneficiaries of the estate of the deceased herein to enable him and the petitioner file succession proceedings as directed vide the ruling of this court delivered by Justice Kamau dated 12/6/2023.
2. The application is supported by grounds on the face thereof as well as an affidavit sworn on even date. The Objector's gravamen is inter alia; that he had filed an objection for nullification of grant and in which the court allowed it vide the ruling dated 12/6/2023; that the court ordered that a fresh succession process be commenced by the chief writing an introductory letter indicating all the beneficiaries; that the area chief of North Gem Location has declined to comply; that this court should now order the said chief to comply to comply so as to enable the filing of the fresh succession.
3. The application is opposed by the Petitioner/Respondent who filed a replying affidavit sworn on 26/2/2024 and who averred inter alia; that the application is misconstrued since the court vide the ruling dated 12/6/2023 directed the parties to provide their separate schedules of deceased's beneficiaries, if any, to enable the court establish the persons to be issued with the grant of letters of administration; that at no time did the court direct that a chief was to write introductory letters; that no



evidence has been shown that the said chief has declined to write the letter sought; that the application lacks merit and ought to be dismissed with costs.

4. The application was canvassed by way of written submissions. Both parties duly complied.
5. It was submitted by the Objector/Applicant that the Applicant being a rightful beneficiary of the estate is entitled to be given the requisite letter of introduction by the area chief so as to enable him comply with the court ruling. It was finally submitted that the petitioner is busy wasting the estate as he is not interested in the matter being finalized.
6. It was submitted for the petitioner that it was quite clear vide paragraph 37 of the ruling dated 12/6/2023 that the parties herein were directed to file separate schedules of the deceased's beneficiaries so as to enable the court make an informed decision on the issue of beneficiaries to the estate of the deceased. It was also submitted that there was no mention of a chief writing introductory letters. It was finally submitted that the application is misleading and should be dismissed and that the Objector should proceed and comply as directed.
7. I have considered the objector's application, rival affidavits and submissions. The only issue for determination is whether the Objector's application has merit.
8. It is not in dispute that the objector herein had earlier filed an application dated 17/12/2018 wherein he sought for revocation and or annulment of the grant of letters administration issued to the petitioner herein. It is also not in dispute that the said application was canvassed via viva voce evidence leading to the ruling dated 12/6/2023 by Justice Kamau wherein the learned judge at Page 11 paragraph 37 held as follows:

“As the relationship between the Objector and the Petitioner and or their exact relation with the deceased herein was not clear to this court from the evidenced that was adduced and they had also not made any reference to other beneficiaries to the deceased's estate, the Petitioner and Objector be and are hereby directed to provide their separate schedules of the deceased's beneficiaries, if any, to enable the court exercise its final discretion as to the person or persons to whom a grant of letters of administration to the deceased's estate will be issued as provided in line with Section 66 of the *Law of Succession*.”

It is clear therefore from the foregoing directions by the said learned Judge that the task that the parties herein was to perform was to come up with their respective beneficiaries of the deceased. This direction was issued since from the oral evidence tendered, there was no clarity as to who are the true and legitimate beneficiaries of the deceased. This is borne from the fact that the Petitioner and Objector are cousins and are not biological children of the deceased. It was therefore necessary that each of them should come up with their respective schedules or list of beneficiaries. Looking at the directions of the learned Judge, there is nowhere that she directed the parties to go and obtain introductory letters from the area chief. If indeed the Objector and Petitioner are related to the deceased as they claim, they should not have any difficulty in listing down the names of the beneficiaries. They do not need to approach the area chief to give them the names of the beneficiaries. They are deemed to know them already and if that is so, they should just proceed and list the names of the requisite beneficiaries. I am unable to understand why the Objector cannot just proceed and give out the names of the requisite beneficiaries unless he is engaged in a trial and error exercise. I find that he is deemed to know the family members of the deceased. The Objector should not hide behind the area chief but that he should just furnish the names of the beneficiaries in order for this court to make an informed position regarding the deceased's beneficiaries.



9. In view of the foregoing observations, it is m finding that the Objector’s application dated 30/1/2024 lacks merit. The same is dismissed with no costs.

DATED AND DELIVERED AT SIAYA THIS 30TH DAY OF OCTOBER, 2024

D. KEMEI

JUDGE

In the presence of:-

Otieno for Objector/Applicant

N/A for Korongo for Petitioner/Respondent

Ogendo the Court Assistant

