



**In re Estate of Kibue Njau - (Deceased) (Succession Cause 1175 of 2006)  
[2024] KEHC 15265 (KLR) (Family) (29 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15265 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 1175 OF 2006  
PM NYAUNDI, J  
NOVEMBER 29, 2024  
IN THE MATTER OF THE ESTATE OF KIBUE NJAU (DECEASED)**

**BETWEEN**

**ANNAH WANJIKU GITAU ..... OBJECTOR**

**AND**

**ESTATE OF HANNAH WANJIRU NJAU ..... 1<sup>ST</sup> RESPONDENT**

**ESTATE OF PAUL KIBUE NJAU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Background**

1. By Application dated 22<sup>nd</sup> August 2023, presented under Article 159 of the *Constitution of Kenya*, Section 3, 3A, & 3B of the *Appellate Jurisdiction Act*, Rule 73 of the *Probate and Administration Rules*, the Applicant herein, AnnaH Wanjiku sought leave to appeal against Judgment delivered herein on 21<sup>st</sup> September 2017, out of time.
2. The Respondents are named as the ‘Estate of Hannah Wanjiru Njau and Estate of Paul Kibue Njau’. Hannah Wanjiru Njau and Paul Kibue Njau were appointed as Administrators of the Estate of the deceased herein alongside Hannah Wanjiku Gitau by the Court in its judgment of 21<sup>st</sup> September 2017 pursuant to consent recorded on 30<sup>th</sup> June 2016.
3. At the time of filing the Application, the 1<sup>st</sup> and 2<sup>nd</sup> Administrator were dead. Vide Notice of Preliminary Objection dated 12<sup>th</sup> September 2023, Counsel on record for the administrators now deceased raised 3 issues-



- i. That the Petitioner/ Respondents herein are deceased hence their grant became revocable under Section 76 of the Law of Succession Act interpreted by the Court of Appeal in *Florence Okutu Nandwa & Another v. John Atemba Kojwa, Kisume Civil Appeal* (1998) eKLR
  - ii. That this application violates the procedures set out in the Law of Succession Act and the Probate and Administration Rules
  - iii. That the Applicant has no Locus Standi to bring this application and the application is therefore incurably defective and ought to be dismissed with costs
4. In addition to the judgment delivered on 21<sup>st</sup> day of September 2017, on 13<sup>th</sup> March 2019, the Court directed that the Deputy Registrar execute documents to facilitate the distribution of the Estate.
  5. On 14<sup>th</sup> December 2023, I directed that the Respondents file an application for revocation of the grant as following the death of the 2 administrators, the grant was inoperable and therefore in accordance with Section 76 should be revoked. The Respondents were also to nominate an administrator in place of the deceased administrators.
  6. Pursuant to those directions, the Applicant filed Petition dated 3<sup>rd</sup> April 2024 seeking grant of representation of Assets unadministered in respect of the Estate of Kibue Njau.
  7. Annah Wanjiku Gitau has objected to the making of the grant on the bias that under Section 66, she ranks in priority to the Petitioner who is a grandson to the deceased. She further contends that by virtue of Section 81 she is the only surviving personal representative of the Estate and therefore she is the only person legally entitled to faithfully administer according to law all the estate of the estate of the deceased.
  8. Both parties filed submissions. The Petitioner contends that as all eh administrators have died Section 81 of the Law of Succession Act does not apply. Reference is made to the decision in Mwangi Mugure alias Elieza Ngware (Deceased) and *In the Matter of the estate of Mary Wairimu Ngware (Deceased)* Nairobi HCCC Succession Cause No. 2018 of 2001. Reliance is also placed on the decision in Estate of Hannah Njuki (deceased) Nairobi High Court Succession Cause No. 463 of 1997
  9. It is further submitted that ultimately the Court has the discretion on whom to appoint as administrator and the ranking under Section 66 is a guide. The Petitioner cites the decisions *in Estate of Margaret Muringi Muhoro* (Deceased) [2014] KEHC (KLR) and *Re Estate George Ragui Karanja (Deceased)* [2016] eKLR.
  10. He contends that members of the 1<sup>st</sup> and 2<sup>nd</sup> Hose of the deceased are in support of his Application.
  11. In her submissions the Objector identifies two issues for determination
    - i. Whether the Petition is properly anchored in law?
    - ii. Whether the Court should grant any letters of administration to the Petitioner
  12. It is submitted that the Application should fail as the Petition is not anchored on an provision known at law. Reliance is placed on the decisions in *Yusuf Gitau Abdallah v Building Centre (K) Ltd & 4 others* [2014] eKLR and *In the matter of the National Gender and Equality Commission* [2014] eKLR
  13. On the 2<sup>nd</sup> Issue it is submitted that the Objector is a surviving administrator capable of administering the estate and reference made to the decision *in Re Estate of Seth Namiba Ashuma (Deceased)* [2020] eKLR and *In Re Estate of Magangi Obuki (Deceased)* [2020] eKLR



14. The Objector is apprehensive that if the Petitioner obtains the grant he will proceed to execute orders arising from the impugned judgement of 21<sup>st</sup> September 2017 and the subsequent orders issued on 13<sup>th</sup> March 2019.

### **Analysis and Determination**

15. As narrated above the current Petition was necessitated by the Application of the Objector dated 22<sup>nd</sup> August 2023 in which she seeks leave to file appeal out of time against the judgment of the Court delivered on 21<sup>st</sup> September 2017.
16. The Respondents in the application are the 'estate' of the deceased administrators, Hannah Wanjiru Njau and Paul Kibue Njau. That Application ran into head winds as for obvious reasons the application is incompetent as the 'respondents' are deceased and therefore not representatives of the estate.
17. In an attempt to cure this, the Court directed that an application be filed to revoke the grant that is now inoperable and nominate another administrator. The Objector submits that she is the surviving administrator and she should therefore be allowed to proceed with the administration of the estate.
18. It is not in dispute that 2 of the Administrators are deceased. The surviving administrator intends to challenge a judgment delivered by the Court, by necessary implication she does not intend to administer the estate as directed by the Court.
19. Until the decision of the Court as rendered in its judgment on 21<sup>st</sup> September 2017 is overturned, it remains valid. The Objector has a pending application dated 22<sup>nd</sup> August 2023.
20. I agree with the decisions *in Estate of Margaret Muringi Muboro* (Deceased) [2014] KEHC (KLR) and *Re Estate George Ragai Karanja (Deceased)* [2016] eKLR, the grant issued on 21 September 2017 is inoperable on account of the death of 2 administrators. The surviving administrator is contesting the grant, she therefore is not available to administer the grant.
21. The Petition as presented by the Petitioner seeks the appointment of a grandson. The circumstances herein represent a situation in which the Court can exercise its discretion to depart from the order of ranking as provided under Section 66 of the *Law of Succession Act*.
22. Accordingly, by virtue of Section 76 which allows the Court to revoke a grant on its motion I will proceed to revoke the grant issued herein to Hannah Wanjiru Njau, Paul Kibue Njau and Hannah Wanjiku Gitau.
23. Section 47 of the *Law of Succession Act* and Rule 73 of the *Probate and Administration Rules* empower this Court to make and pronounce such decrees and make such orders as may be expedient to meet the ends of justice.
24. Accordingly having revoked the grant I direct that a fresh grant will issue to Francis Karanja Njau.
25. The Application dated 22<sup>nd</sup> August 2023 will now proceed to hearing. The Administrator (Francis Karanja Njau) to file response within 14 days. The Applicant therein granted leave to file further affidavit within 14 days of service. Mention on 26<sup>th</sup> February 2025 to confirm compliance and take further directions.
26. This being a family matter each party will bear their own costs.

**DATED, SIGNED AND DELIVERED ON THE VIRTUAL PLATFORM, AT NAIROBI THIS 29<sup>TH</sup> DAY OF NOVEMBER, 2024.**



**PATRICIA NYAUNDI**

**JUDGE**

In the presence of:

Fardosa Court Assistant

