



In re Estate of Lucas Ntalamea Ole Kudate (Deceased) (Succession Cause E008 of 2024) [2024] KEHC 16455 (KLR) (20 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16455 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
SUCCESSION CAUSE E008 OF 2024
F GIKONYO, J
DECEMBER 20, 2024**

IN THE MATTER OF THE ESTATE OF LUCAS NTALAMEA OLE KUDATE (DECEASED)

BETWEEN

ZAHRA NOOR ISMAEL DUALE APPLICANT

AND

NANYIGAE KUDATE 1ST RESPONDENT

SAMUEL KASAINI KUDATE 2ND RESPONDENT

ROBERT KANYINGE KUDATE 3RD RESPONDENT

RULING

Preliminary objection

1. The respondents herein filed a notice of preliminary objection dated 29/07/2024 to oppose the notice of motion application dated 24/07/2024 on the ground that the suit as instituted offends section 54 of the *law of succession act* and the fifth schedule paragraph 14 of the Probate and Administration Rules.

Directions of the court

2. The notice of preliminary objection was canvassed by way of written submissions.

The respondents' submissions

3. The respondents submitted that a party who seeks to file a suit on behalf of an estate of a deceased person must first obtain a limited grant of administration ad litem. This is the letter of the law and the same cannot be vitiated or wished away by any parties claiming under the estate of the deceased. The respondents relied on section 54 of the *Law Of Succession Act*, Julian Adoyo Ongunga



The applicant's submissions.

4. The applicant submitted that filed herewith is a petition dated 16/05/2024 for grant of probate; filed by one Mr. Jackson Karino Sangare the petitioner. The applicant stated that, she is simply seeking for protection of her properties from intermeddling by the respondents pending the determination of the succession cause. She was categorical that she has not instituted the application or suit on behalf of the estate of the deceased. The applicant relied on articles 27, and 40, of *the constitution*, Sophy Njiri Vs National Bank of Kenya & Another [2015] eKLR, sections 45, 47 of The Law of Succession, rule 73 of the Probate and Administration Rules, John Marete Kirema & Another Vs Gladys Karimi Muthamia & 3 others (163) [2013] eKLR (Electronic Kenya Law Reports).

Analysis And Determination

5. This ruling is on a notice of preliminary objection filed by the respondents to the application dated 24/07/2024.
6. A preliminary objection raises a point of law, which, if successful, will decimate the case or the application. Such point should not involve evidentiary probing to prove. Mukhisa Biscuits case.
7. The objection herein must fit within the said legal framing for preliminary objection.
8. Section 54 which the respondents claims has been offended by the application herein relates to limited grants. The application herein is not a petition for limited grant.
9. The applicant stated that she has not instituted the application on behalf of the estate of the deceased but is seeking protection of her properties from intermeddling by the respondents pending the determination of the succession cause.
10. This is a succession cause for grant of probate. A beneficiary or any person may apply for preservation of estate property pending determination of a succession cause. The purported objection is therefore, not only misconceived but untenable objection. It is dismissed.
11. Being a succession cause, no order as to costs.
12. However, the cause be fast-tracked through the legal steps required in law.
13. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 20TH DAY OF DECEMBER, 2024.

HON. F. GIKONYO M

JUDGE

In the presence of: -

Lusweti for applicant

Tanyasis for respondents

Otolo C/A

