



REPUBLIC OF KENYA



**In re Estate of the Late Joseph Seilenyi Ole Nkaitoi (Succession Cause E597 of 2020) [2023] KEHC 17457 (KLR) (Family) (28 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 17457 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE E597 OF 2020**

**MA ODERO, J**

**APRIL 28, 2023**

**IN THE MATTER OF THE ESTATE OF JOSEPH SEILENYI OLE NKAITOI (DECEASED)**

**BETWEEN**

**WINNIE CHERONO CHESIRE ALIAS NARAMAT SAILENYI ..... PETITIONER**

**AND**

**JENIPHER SAILENYI NKUSUNI ..... 1<sup>ST</sup> RESPONDENT**

**JONATHAN NKOITOI ..... 2<sup>ND</sup> RESPONDENT**

**INSPECTOR GENERAL OF NATIONAL POLICE SERVICE .... 3<sup>RD</sup>  
RESPONDENT**

**MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL  
GOVERNMENT ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. Before this Court for determination is the summons for Grant of letters of Administration Ad Colligenda Bona dated August 17, 2020 in which the Petitioner Winnie Cheronon alias Naramat Sailyeni seeks the following orders:-

- “ 1. Spent.
2. Spent.
3. That pending the hearing and determination of the summons the Honourable court be pleased to issue orders to preserve the late Joseph Seilenyi Ole Nkaitoi Estate and more particularly restrain the release of Pension and Pioneer Funds to the 1<sup>st</sup> and 2<sup>nd</sup> respondents herein by the National Police Service,



the 3<sup>rd</sup> respondent herein and generally to issue a preservatory order over the deceased's estate and by dint of the above order the 1<sup>st</sup> and 2<sup>nd</sup> respondents be restrained from collecting the Pension and Pioneer Funds above and/or intermeddling with the estate of the Deceased.

4. That costs of this application be granted to the Petitioner.
2. The summons which was premised upon section 29 (a), section 45, section 67 of the [Law of Succession act](#), cap 160, Rule 36 of the [Civil Procedure Rules](#) and Rule 73 of the [Probate and Administration Rules](#) as well as the inherent jurisdiction of the court and other enabling provisions of the law was supported by the Affidavit of even date sworn by the Petitioner.
3. The respondents opposed the Petition through the replying affidavit dated July 21, 2023 sworn by the 1<sup>st</sup> respondent Jenipher Salenyi Nkusuni as well as the replying affidavit dated July 21, 2023 sworn by the 2<sup>nd</sup> respondent Jonathan Nkoi to (a brother to the Deceased). The Petition was canvassed by way of written submissions. The applicant filed the written submissions dated November 15, 2022 whilst the respondents relied upon their written submissions dated October 13, 2022.

### **Background**

4. This Succession Cause relates to the estate of Joseph Seilenyi Ole Nkaitoi (hereinafter 'the Deceased') who died intestate on September 3, 2019 at the Kakamega County General Hospital. A copy of the Death Certificate Serial Number 0414477 appears as Annexure 'WCCNS '1' to the summons. According to a letter dated September 19, 2019 written by the Chief of Kilgoris location (Annexure 'WCCNS '3') the Deceased was survived by a wife Jenipher Salenyi Nkusuni (the respondent herein) and seven (7) children.
5. The petitioner Winnie Cherono alias Naramat Sailenyi avers that she is a biological daughter of the Deceased having been born of a marriage between the Deceased her mother.
6. To date no Grant of letters of Administration has been made to any person(s) in respect of the estate of the Deceased. The Petitioner now seeks to be issued with a Grant Ad Colligenda Bona to enable her collect in and preserve the estate of the Deceased.
7. The Petitioner claims that the Deceased and her mother got married under Kalenjin Customary Law known as 'Koito' in the year 1989. That the two cohabited as man and wife until the year 1995 when they parted ways. The Petitioner states that she herself was born in the year 1992. She asserts that she is a beneficiary to the estate of the Deceased and is entitled to inherit thereunder as provided by law. That she was recognized in the eulogy as a child of the Deceased.
8. The petitioner accuses the respondents of having intermeddled with the estate of the Deceased. She avers that the 1<sup>st</sup> respondent who is a wife of the Deceased and the 2<sup>nd</sup> respondent who is a brother to the Deceased have been engaged in an illicit love affair. That some of the children born to the 1<sup>st</sup> respondent were actually sired by the 2<sup>nd</sup> respondent. The Petitioner urges that DNA tests be conducted to ascertain the paternity of the children born to the 1<sup>st</sup> respondent.
9. The petitioner states that it is necessary for court to issue her with a Grant Ad Colligenda Bona to prevent further intermeddling and/or depletion of the estate by the respondents pending the obtaining of a full Grant.



10. As stated earlier the summons was vehemently opposed. The 1<sup>st</sup> respondent assets that she is the only surviving legitimate wife of the Deceased and thus the next of kin of the Deceased. She acknowledges that the Deceased had two (2) wives but states that the 2<sup>nd</sup> wife is deceased.
11. The 1<sup>st</sup> respondent denies that the Petitioner is a child of the Deceased. She states that the petitioner is not known to herself nor to any other family member of the Deceased.
12. Similarly the 2<sup>nd</sup> respondent a brother to the Deceased avers that the Deceased had two (2) wives being the 1<sup>st</sup> respondent and the late Nekesa Sailenyi who is now Deceased. The 2<sup>nd</sup> respondent also denies that the petitioner is a child of the Deceased. He states that being a brother to the Deceased he would have been aware of and would have participated in any traditional marriage between the Deceased and the mother of the Petitioner.
13. The 2<sup>nd</sup> respondent denies that the petitioner was recognized in the eulogy. He asserts that the petitioner has never visited the home and is not known to the family of the Deceased.
14. Both the 1<sup>st</sup> and 2<sup>nd</sup> respondent categorically deny the petitioner's claim that they were involved in an illicit love affair and had children together. They assert that the Deceased listed the 1<sup>st</sup> respondent as his next of kin at his work place (the Kenya Police), thus it is the 1<sup>st</sup> respondent who is entitled to benefit from the Deceased's insurance and from the Police Sacco. They urge the court to dismiss this petition in its entirety.

### **Analysis and Determination**

15. I have carefully considered the Petition before this court, the Replies filed by the respondents as well as the written submission filed by both parties. The only issue for determination is whether the petitioner's prayer for Grant of letters of Administration Ad Colligenda Bona is merited.
16. It is common ground that the Deceased who was a member of the Kenya Police Force serving in Kakamega died intestate on September 3, 2019. It is also manifestly clear that to date no person/persons have been appointed as legal Representatives of the estate of the Deceased.
17. As a general rule where no grant has been issued by the court any person is entitled to apply for a grant may approach the court to obtain a Grant Ad Colligenda Bona for purposes of collecting calling in and preserving the estate of Deceased pending the issuance of a Grant.
18. In *Tristram and Coote's Probate Practice*, 24 ed. At page 394 it is stated:-
 

“When the estate of a deceased person may be endangered by delay in administering it, the court is not bound to wait for an application by the person entitled to a grant under the rules, but may grant letters of administration ad colligenda bona for the purpose of preserving the property.”
19. Section 67 of the *Law of Succession Act* cap 160, Law of Kenya provides for the administration of the estate limited for purposes only of collecting and preserving the assets. Under Rule 36 (1) of the *Probate and Administration Rules* such letters may only issue “where, owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of the representation to the person who by law be entitled thereto in sufficient time to meet the necessities of the case...”
20. It is important to note that a Grant Ad Colligenda Bona does not confer upon the Grantee the status of a “personal representative” of the deceased person and such Grantee is not entitled to administer



the estate of the Deceased. A Grant Ad Colligenda Bona is only made in order to preserve the estate of a Deceased pending issuance of a full grant.

21. However a Grant Ad Colligenda Bona cannot be issued to any person who Petitions the court. The petitioner must demonstrate that he/she has sufficient '*locus standi*' to file the petition i.e. that the petitioner is a person who has an interest in the estate i.e. is a beneficiary thereunder.

22. In *Tristram and Cootes' Probate Practice*, 24<sup>th</sup> Edn, it was stated at pg 369 that :-

“A grant ad Colligenda bona may be made not only to a person whom the court considers suitable, but also to the persons who are entitled to a full grant but in the interest of the estate cannot wait or to entire strangers who have been brought into connection with the matter.’ [own emphasis]

23. The question then is whether the petitioner herein has met the requisite threshold for issuance of such a grant under the law.

24. The Petitioner claims to be a biological daughter to the Deceased and therefore a beneficiary to his estate. This is categorically denied by the respondents. The question of whether the Deceased was ever married to the Petitioner's mother and the question of whether the Petitioner is in actual fact a daughter to the Deceased cannot be determined under the auspices of this Petition. Those are issues which can only be determined after a full hearing at which parties will be directed to call witnesses.

25. The Petitioner has conceded that the 1<sup>st</sup> respondent is a wife to the Deceased and that the 2<sup>nd</sup> respondent is a brother to the Deceased. Therefore it is the respondents who have a legitimate interest in the estate of the Deceased and who have the right to approach the court for letters of Administration.

26. Finally I find no merit in this application as the status of the petitioner is yet to be determined. In conclusion this court makes the following orders:-

- (1) The Petition dated August 17, 2020 is dismissed in its entirety.
- (2) The respondents to file a Petition for Grant of letters of Administration within forty (40) days which Petition is to be served upon the petitioner.
- (3) The Petitioner is at liberty to file an objection to issuance of Grant to the 1<sup>st</sup> and 2<sup>nd</sup> respondents if she is so minded.
- (4) Each party to bear its own costs.

**DATED IN NAIROBI THIS 28TH DAY OF APRIL, 2023.**

.....

**MAUREEN A. ODERO**

**JUDGE**

