



**In re Estate of Peter Mwaniki Matongu (Deceased) (Succession Cause
3 of 2019) [2023] KEHC 19153 (KLR) (29 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19153 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
SUCCESSION CAUSE 3 OF 2019
AK NDUNG’U, J
JUNE 29, 2023**

IN THE MATTER OF THE ESTATE OF PETER MWANIKI MATONGU (DECEASED)

BETWEEN

TERESA WANJIKU PETITIONER

AND

NANCY WANGUI MWANIKI 1ST OBJECTOR

JOHN MAINA MWANIKI 2ND OBJECTOR

REUBEN GATHIRUA MWANIKI 3RD OBJECTOR

WILSON MURAGE MWANIKI 4TH OBJECTOR

RULING

1. Before this court is a petition for letters of administration pendente lite filed by REUBEN GATHIRUA MWANIKI (3rd Objector) who is a son of the Deceased. It is supported by an affidavit of the 3rd Objector. It is deponed that the Deceased herein died on June 13, 2019 and that an objection to the validity of his will is pending before this court. That the Deceased died leaving some properties including Nanyuki Municipality Block 10/330 and Nanyuki Municipality L.R 2787/6/V which have rental properties generating rental income which the Petitioner/Respondent is collecting for her own benefit. That it would not be possible for the court to make a full grant in sufficient time to protect the estate of the Deceased from wastage by the Petitioner/Respondent. He seeks to be granted letters of administration pendente lite to collect and receive rental income from the aforesaid properties for eventual distribution to other beneficiaries.
2. The application was opposed by the Petitioner/Respondent herein who filed answer to petition dated October 3, 2022. The petition is opposed on the ground that the Petitioner is a widow of the Deceased and the Deceased in his written will dated October 3, 2018, appointed her as an executrix of the



Deceased's estate hence, she is entitled to perform her duties as an executrix including preserving the estate and paying out the estate's debts in accordance to section 80(1) and 83 of the [Law of Succession Act](#). That her duties commenced from the death of the Deceased and that she will render a true account of the estate as and when required. She stated that the Applicants'/Objectors' application is an afterthought as they are trying to control the Deceased's estate while the matter is pending hearing and determination.

3. The petition was canvassed by way of written submissions. The Applicants/Objectors submitted that they have met the threshold for grant of the letters of administration pendente lite since they have filed objection proceedings challenging the validity of the will. They urged the court to rely on the persuasive decision of [Re estate of Fanice Mary Khanali Aura \(2019\) eKLR](#) where letters of administration pendente lite were granted awaiting objection proceedings. Furthermore, he is a son of the Deceased hence ranks well in priority for the grants of the orders sought. The Applicants/Objectors submitted that section 80(1) and 83 of the [Law of Succession Act](#) is not applicable in the instant case since an objection on validity of the will has been raised.
4. The Petitioner/Respondent filed written submissions as well. She argued that the Applicants' petition is incompetent since it was not properly executed in accordance with Probate Rules and more specifically Form 78 of the Schedule. She repeated that the Deceased left a written will which appointed her as an executrix and that she will therefore render true and just account when required to do so.
5. From the foregoing, the only issue for determination is whether letters of administration pendente lite should be granted to the 3rd Objector/Applicant herein.
6. To begin with, the Petitioner/Respondent submitted that the Applicant's application is incompetent for it was not properly executed as required under Form 78 of the [Probate Rules](#). Form 90 of the Probate Rules is the form that provides for petition for letters of administration pendente lite. The form states that execution part should conform to Form 78 of the Rules. Form 78 provides that the petition must be signed by the Petitioner in the presence of his advocate or of not less than two other adult witnesses who must also sign and append their full names, addresses and descriptions. This was not done in the instant petition. I however view it as an error curable under Article 159(d) of the [Constitution](#) which states that;

(d) justice shall be administered without undue regard to procedural technicalities.
7. On the substance of the matter, the starting point is the 5th Schedule of the [Law of Succession Act](#) under Paragraph 10 which states as follows;

' Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the court may appoint an administrator of the estate of the deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing the estate, and the administrator shall be subject to the immediate control of the court and shall act under its direction.'
8. This is where an administrator is appointed simply to administer the estate of the Deceased during litigation where the will of the Deceased is being contested. Pending the determination of that dispute, the court may appoint an administrator pendente lite to continue to administer the estate so as it is not wasted. The administrator is not permitted to distribute the estate but merely manage the same pending litigation.
9. The only issue raised by the Applicants/Objectors pertains to two properties that is; Nanyuki Municipality Block 10/330 and Nanyuki Municipality LR 2787/6/V which the Applicants states are



generating rental income which the Petitioner/Respondent has been collecting for her own benefit. The Respondent did not deny the fact that she has been collecting rent from the said properties. She did not neither deny that she had been collecting the same for her own benefit leaving out the Deceased's other beneficiaries.

10. I think this is a proper case for the appointment of an administrator pendente lite in accordance with Rule 10(fifth schedule). This will serve the interests of the estate and all beneficiaries entitled as the estate will be protected from waste through intermeddling and the running concerns will have a ready and accountable manager.
11. The 3rd Applicant seeks to be appointed as the sole administrator pendente lite. However, his application is not supported by any consent from other Objectors agreeing to his appointment. My considered view is that the orders that befit is that;
 - i. The Petitioner/Respondent should be ordered to render accounts on how the rental money had been collected and used from the date of the death of the Deceased to date within 30 days;
 - ii. That an order be issued directing the beneficiaries to choose two administrator pendente lite within 30 days.
 - iii. In default of agreement on ii above, the court to appoint appropriate administrator(s) pendente lite.

DATED SIGNED AND DELIVERED AT NANYUKI THIS 29TH DAY OF JUNE 2023

A. K. NDUNG'U

JUDGE

