



In re Estate of Jonathan Kipkemboi Moi (Deceased) (Succession Cause 705 of 2019) [2023] KEHC 21331 (KLR) (Family) (4 August 2023) (Ruling)

Neutral citation: [2023] KEHC 21331 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 705 OF 2019
MA ODERO, J
AUGUST 4, 2023**

BETWEEN

COLLINS MOI 1ST APPLICANT

FAITH MILKA NYAMBURA 2ND APPLICANT

AND

SYLVIA JONATHAN MOI 1ST RESPONDENT

CLINT KIPRONO MOI 2ND RESPONDENT

RULING

1. This Succession Cause relates to the Estate of the Late Jonathan Kipkemboi Moi (hereinafter ‘the Deceased’) who passed away on April 20, 2019. A copy of the Death Certificate Serial Number 0636977 appears as Annexure ‘A’ to the Petition for Grant of letters of Administration *Ad Colligenda Bona* dated June 6, 2019.
2. According to a letter dated May 31, 2019 authored by the Chief of Perkeira Location, Eldama Ravine, the Deceased was said to have been survived by the following persons:-
 - (1) Sylvia J Jonathan Moi - Wife
 - (2) Clint Kiprono Moi - Son
 - (3) Barbara Jebet Moi - Daughter
 - (4) Leroy Kiptoo Moi - Son
 - (5) Wayne Wendot Toroitich Moi - Son



3. On June 25, 2019 a limited Grant of Letters of Administration *Ad Colligenda bona* was issued to the Widow Sylvia J Jonathan Moi only for purpose of enabling her to “Collect, preserve and generally take such actions as may be necessary to ensure that the Assets of the Deceased’s estate are not wasted”.
4. Thereafter the Widow and Clint Kiprono Moi a son of the Deceased filed a Petition seeking Grant of Letters of Administration Intestate. The Grant was duly issued to the two on October 15, 2019.
5. Objection to the making of Grant were filed by Collions Kibet Toroitich Moi, Faith Milkah Nyambura Mburu and Nyambura Beatrice Mbuli Kipkemboi Moi.
6. The matter was referred for Court Annexed Mediation (‘CAM’) and as a result a Partial Settlement Agreement dated April 18, 2022 was filed in Court on April 19, 2023. That Partial Settlement Agreement was duly adopted by this court on May 8, 2023.
7. Under the terms of that Partial Settlement Agreement the following are the issues which were not agreed upon and therefore remained outstanding.
 - “(1) Whether Faith Nyambura and Beatrice Mbuli are spouses of the Deceased.
 - (2) Whether each of the Deceased’s 4 houses should be represented as Co-Administrators of the Deceased’s estate”.
8. The court directed parties to file written submissions in respect of issue No (2) only. The 1st Applicant Collins Moi filed submissions dated June 10, 2023, the 2nd Applicant Faith Milkah Nyambura filed written submissions dated June 9, 2023, Ashney Mary Nyagichira filed written submissions dated June 12, 2023, Nyambura Beatrice Mbuli Kipkemboi Moi filed submissions dated June 9, 2023, whilst the Administrators filed their written submissions dated June 13, 2023.
9. The Parties appeared in court to highlight their written submissions on July 20, 2023.

Analysis and Determination

10. I have carefully considered the facts of this case as well as the written submissions filed by all parties. The only issue for determination is whether all four (4) ‘houses’ of the Deceased should have a representative as co-administrator of the estate.
11. Counsel for the 1st and 2nd Applicants as well as counsel for the 1st and 2nd Objectors and counsel for Ms Ashney Kipkemboi were all in agreement that since the Deceased was survived by four (4) Houses each ‘House’ should have one (1) representative as Administrator. They all recommended that the 1st House which was represented by two (2) Administrators should cede one position to accommodate the 4th House as this would best serve the interests of justice, inclusivity, fairness and equity.
12. The parties (save for the Administrators) all recommended that Administrators be appointed as follows
 - (1) Clint Kiprono or Sylvia Moi - From 1st House
 - (2) April Jerop Moi - From 2nd House
 - (3) Ashney Mary Nyagichira Kipkemobi - From 3rd House
 - (4) Fredrick Kibichu - From 4th House
13. The Administrators however, opposed the above recommendation. It was submitted that the Widow Sylvia Moi got married to the Deceased under the African Marriage and Divorce Act and was issued with a Marriage Certificate – That therefore, the Deceased had no legal capacity to marry another wife.



14. Counsel for the Administrators insisted that his clients were entitled to two (2) slots as Administrators and stated that they had no objection to two (2) additional administrators being appointed.
15. Counsel further submitted that what is being referred to as the 4th House is not in actual fact a family unit as it merely consists of persons who claim to be the children of the Deceased.
16. Therefore according, to the Administrators no good reason has been advanced why one Administrator should be removed. They assert that in any event the only legal way to remove an Administrator is by filing a summons for revocation of Grant.
17. The parties herein have been unable to reach an agreement on who are to be appointed as Administrators of the estate of the Deceased – Section 56(1) (b) of the *Law of Succession of Kenya* provides as follows:-

“No Grant of representation shall be made –

- a.
 - b. To more than four persons in respect of the same property”
18. The Law therefore, limits the number of Administrators who may be appointed in respect of the same estate to four (4) person only.
 19. Currently the Grant of Letters of Administrators Intestate are held by Sylvia Moi and Clint Kiprono Moi both of whom represent the 1st House.
 20. According, to the facts of the case, the Deceased had beneficiaries from what has been described as four (4) houses. The 1st to 3rd houses are claimed to have been wives and children of the Deceased while the 4th house is comprised of other children of the Deceased. The 1st house is the one that is currently administering the estate since the two (2) Administrators are the wife and son of the Deceased. Other beneficiaries sought to revoke the grant which led the parties to be referred to mediation.
 21. During Mediation, the beneficiaries were able to agree on who should be appointed as Administrator from each of the houses including the 4th house but the 1st house failed to cede one slot to accommodate this 4th House. All the other Parties have submitted that they are in agreement that each house should have a representative but the Administrators are adamant that they retain two (2) slots.
 22. In the Partial Settlement Agreement, the parties, all recognized nineteen (19) persons as beneficiaries of the estate of the Deceased. The list of recognized beneficiaries was annexed to the Settlement Agreement and included the following

List of Beneficiaries

1. Clint Moi
2. Barbara Moi
3. Wayne Moi
4. Leroy Moi
5. Collins Moi
6. Ashney Nyagichira Kepkemoi
7. Gift Jomil Kaly



8. Stephanie Upendo
 9. Cystal Kabon Moi
 10. April Moi
 11. Alan Ruto
 12. Brian Toroitich
 13. Geoffrey Toroitich
 14. Gerald K. Toroitich
 15. Vivian Jepkorir
 16. Lawrence Kpchumba Toroitich
 17. Joseph Mugalla
 18. Andrew Kibichii Toroitich
 19. Fredrick Kibichii Kemoi
23. It is therefore, not disputed that the children in the 4th house are beneficiaries of the Deceased person, as well as the children in the 2nd and the 3rd house. The 4th house remains without representation since the 1st house has refused to cede one slot to a representative from the fourth house.
24. Having recognized during mediation all the members of the fourth (4) House it is duplicitous of the Administrators to now insist on having two slots and denying the 4th House a slot in the administrator of the estate.
25. In the care of *Mbulwa Maingi v Veronica Nthamba*[2015] eKLR the court stated thus –
- “Where there are more than one (1) family or one (1) house, the Administrator of the deceased’s estate cannot be a single person, but rather representatives from each house. This is to ensure that each representative acts as trustee for the other members of that house or family that he or she represents. This is consistent with Section 58 (1) (a) and Section 84 of the *law of Succession Act* Cap 160” [own emphasis]
26. Having been recognized as beneficiaries it is only just and equitable that this group being the children of the Deceased have representation amongst the Administrators of the estate. It would not be fair to have one house represented by two Administrators whilst the fourth house remains unrepresented.
27. Accordingly, I do direct that the 1st house select one of the existing two (2) Administrators to represent that house. I direct that the Administrators of the estate of the Deceased be appointed as follows
1. Sylvia J. Moi or Clint Kiprono Moi - 1st house
 2. April Jerop Moi - 2nd house
 3. Ashney Mary Nyagichira Kipkemboi - 3rd house
 4. Fredrick Kibichii - 4th house
28. This being a family matter I direct that each side bear its own costs.

DATED IN NAIROBI THIS 4TH DAY OF AUGUST, 2023.



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MAUREEN A. ODERO
JUDGE

