



In re Estate of Benedict Marangu alias Pius M’arunga (Deceased) (Miscellaneous Succession Cause E035 of 2022) [2023] KEHC 26133 (KLR) (30 November 2023) (Judgment)

Neutral citation: [2023] KEHC 26133 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS SUCCESSION CAUSE E035 OF 2022
EM MURIITHI, J
NOVEMBER 30, 2023
IN THE MATTER OF THE ESTATE OF BENEDICT
MARANGU ALIAS PIUS M’ARUNGA (DECEASED)
CITATION TO ACCEPT OR REFUSE LETTERS OF ADMINISTRATION INTESTATE**

**IN THE MATTER OF
VINCENT KOOME CITOR**

JUDGMENT

The Petition

1. Before the court is application by citation dated 15/12/2022 by a child of the deceased herein against his brother and sisters to petition for the full grant of letters of Administration to the estate of their deceased father.
2. The law empowers the succession court under section 70 of the *Law of Succession Act* to generally issue citations and in the circumstances prevailing here is set out in as follows:
 - “22. Citation to accept or refuse or to take a grant
 - (1) A citation may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.”
3. As children of the deceased herein, the applicant and his siblings, are all equally entitled to petition for letter, and it may only have been necessary to seek to petition and obtain the consent of the persons in equal priority.



The grounds of the citation

4. The applicant accuses the 1st Citee of intermeddling with the estate using a limited grant ad litem to access some of deceased's accounts and receive payments for telecommunication masts on one of the assets of the estate to the exclusion of the other beneficiaries and without taking out petition for the full grant of letters of administration. The applicants seeks to be permitted to file for the grant together with one of his sisters. He lists the deceased's survivors as 6 children, 2 of who are deceased. He charges that his brother 1st citee had in obtaining the limited ad litem grant

“forged some of our signatures in the consent used to obtain the limited grant and I reported the matter to the police and investigations are ongoing.”

The Response

5. The 1st Citee's case as set out in a replying affidavit sworn on behalf of the Citees on 26/4/2023 is a vehement denial of inappropriate dealing with the assets of the deceased countering that

“the dealings with Safaricom is by express consent of the siblings and the applicant himself” and “the respondent was reluctantly nominated to take over the deceased's Sacco account at the Sacco's premises in order that he would be accessing the monies for applying the fees and other support to the sibling pending the commencement of the requisite succession cause hereof”. He further charged that the Citor had failed to disclose that he was himself “nominated by us (siblings) to take over the deceased account with Catholic Men's Association (also known as NCHEMA) and although he used the money on himself alone and we have not raised a finger yet.”

The Citee also charged that the Citor's own children had been the main beneficiaries of the incomes from the Masts.

6. By the facts of this application, it is clearly conceded the right of the applicant to petition for Letters as a child of the deceased in equal priority with his siblings brother and sisters is conceded by the respondent Citees and only a question of his fitness on account of having

“been unstable having refused to attended related alcohol-rehabilitation in order to be fit for the exercise hereof.”

This is offered to counter the allegations of wastage by the 1st Citee, which denies as shown above.

7. By a further affidavit of 13/10/2023, the applicant asserts a

“family meeting I attended on 21/01/2023 was for purposes of agreeing on the mode of distribution after the succession has been filed and what is in the said minutes are only proposals that are yet to be implemented.”

Submissions

8. Despite directions therefor, the applicant's counsel did not file submissions as directed on 16/10/2023 giving seven (7) days therefrom to do so.



9. The Citees in Submissions dated 12/10/2023 urge that the citation be dismissed and propose that the living children of the deceased be made joint administrators as follows:

“We humbly submit that the deceased died intestate and left 6 children surviving him namely;

- a) Dermis Kinoti
- b) Stella Rigiri
- c) Catherine Kanan Kiogora
- d) Vincent Koome
- e) Alfred Kirimi (Deceased)
- f) Alexander Mwenda Deceased

We humbly propose that the surviving children of the deceased be made the joint administrators of the estate hereof.

It is our humble submissions that the so-called Criminal process instigated by the applicant is being used to for sole and predominant purpose of harassing and penalizing the Citee to submit to their demands and Applicant's wish to exclude him as an administrator.

We urge this Honorable Court to find that the Citation is unmerited and has not been brought in good faith and fails to demonstrate how the respondent has put the estate to waste.

It is our humble submissions that the citation herein is a waste of Judicial time and should be dismissed with costs.”

Determination

10. The answer to the problematic relationship between the heirs in this case appears to call for the expedited appointment of person(s) with full powers of the Administrator(s) appointed upon a petition for the full Grant of Letters of Administration, whereupon the estate assets should be distributed in accordance with the law. Non-consenting persons are, of course, at liberty to file objection to the making or confirmation of Grant under sections 68 or 71 of the *Law of Succession Act*, respectively and PART IV of the Probate and administration Rules 1980, or at the stage of distribution, an Affidavit of Protest under PART VIII thereof.
11. The list of the living survivors of the deceased who rank in equal priority as children of the deceased is agreed between the parties. The Law of Succession permits the making of a grant of representation to a maximum of four persons (section 56(1) (b) of the *Law of Succession Act*). Save the counter accusations of intermeddling, wastage and maladministration, some which may be under investigations by relevant authorities, the Court has not seen on a balance of probability tangible evidence as would disqualify, under section 56 (1) (a) of the Act, any of the two contending heirs from petitioning for the letters of administration or being appointed administrators to the estate in accordance with the priority degrees of consanguinity of section 66 (b) of the *Law of Succession Act*.
12. Needless to state, if there be any questions of intermeddling, the same may be dealt with in the main Petition by suitable orders for account under section 45 of the *law of Succession Act* and or adjustment during distribution of the estate under section 42 of the *Law of Succession Act*.



Orders

13. Accordingly, for the reasons set out above, the court makes the following orders:

- (1) The Court makes an order that all or as many of the four (4) surviving children of the deceased, with the consent of the others if applicable, as wish to be included as petitioners for Letters of Administration Intestate and, consequently, administrators to the estate, shall file a petition for the full grant of representation within thirty (30) days.
- (2) In default thereof, the applicant, either alone or joined by such sibling or siblings as desire to be appointed administrators, shall petition the court for grant of Letters of Administration.

14. There shall be no order as to costs.

15. File closed.

Order accordingly.

DATED AND DELIVERED THIS 30TH DAY OF NOVEMBER, 2023.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Nelima for the Citors.

Mr. Nganga for the Citees.

