



REPUBLIC OF KENYA



**In re Estate of Sila Chemiati (Succession Cause 38 of 1994)
[2023] KEHC 26105 (KLR) (29 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 26105 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 38 OF 1994
REA OUGO, J
NOVEMBER 29, 2023**

BETWEEN

**RAMADHANI MUSUMBA CHEMIATI LEGAL REPRESENTATIVE ESTATE OF
HADIJAH CHEMIATI OBJECTOR**

AND

JAMIN WASIKE CHEMIATI ADMINISTRATOR

RULING

1. Ramadhani Musumba Chemiati, the applicant herein has filed a notice of motion dated the June 9, 2023. The application is brought under sections 1A, 1B, 3, and 3A of the *Civil Procedure Act*, sections 47 and 76 of the *Law of Succession Act*. He seeks the following orders;
 - i. Spent
 - ii. That the order by which the respondent/administrator was allowed to come into the matter in substitution of the deceased administrator Jamin Wasike on 16.2.2023 be and is hereby reviewed and set aside to allow the application to be heard and determined on merit.
 - iii. That the costs be in the cause.
2. The applicant has filed a supporting affidavit dated 9th June 2023 sworn by Mr. Omagwa Angima, his counsel in the conduct of the matter. He depones as follows; his office Omagwa Angima & Co. was served with the application dated 4.2.2023 when they were not on record for the applicant having not been instructed to take over the matter from Ocharo Kebira & Co. advocates who were still on record. When the application came up for hearing on 16.2.2023 Oira advocate from his office who had no authority purported to and did go on record as saying that they were not opposing the application which was then erroneously allowed. The fact is that they did not have the authority as Omagwa Angima & Co. to speak for the applicant who had not even had occasion to see the application itself. They therefore misled the court and are very apologetic. That the replacement of the deceased



- administrator by the respondent was therefore irregular and unprocedural and the order allowing for substitution should therefore be set aside and the application prosecuted afresh.
3. The application was opposed. Agnes Nakhumicha Wasike the administrator responded vide her replying affidavit dated 8th July 2023. She depones that; the application does not meet the requirements for review and that the same must fail. That the applicant has not annexed the order the subject of the application. The application is based on a misapprehension of both the Law of Succession and Probate and Administration Rules. She does not need a grant to substitute her late husband who was a beneficiary of the estate and she is not a stranger as alleged. That Oira advocate has not sworn an affidavit in support of the application to confirm the allegation put forth. Further, Mr. Angima has not disclosed when he was instructed to come on record. The applicant has not demonstrated what prejudice he will suffer if the application is allowed, but that on the contrary, she will suffer irreparable harm if the application is allowed due to the fact that the applicant will continue wasting the estate of the deceased at her own detriment of other beneficiaries/ dependants of the deceased Sila Chemiati. That her appointment as an administratrix was proper and in line with the Law of Succession and Probate and Administration Rules. In a supplementary affidavit filed on the 11th July 2023 dated 8th July 2023, the respondent further deposes that the grant ad litem annexed by the applicant was only necessary for the purposes of instituting the Civil action and not for such a cause. That Ms Omagwa Angima & Co. Advocates are the ones who took over the law firm of M/s Ocharo Kebira & Co. Advocates after Hon. Ocharo Kebira was appointed a Judge of the Employment and Labour Relations Court and thus the objector cannot have his cake and eat it.
 4. The application was canvassed by way of oral submissions. Mr. Angima relied on his affidavit and argued further as follows; that if one is deceased the only way to take over the estate is by way of obtaining a grant of the estate. That the court will identify the right person and give the beneficiaries a chance to take part. They took over from the firm of Ocharo and filed a Notice of change in the matters they took over from Ocharo. They are not on record technically. On the issue of extracting the order, that the same is a technicality but the bigger issue is that Agnes is not the right person and she is not properly on record. The proceeds of the estate need to be controlled by a person with the capacity to do so.
 5. Mr. Bw'onchiri argued that a limited grant is only needed when one has to fill suit. The order being challenged is not attached to the application for review. No requirement for review has been met. Mr. Angima took over the matter from Mr. Ocharo and Mr. Oira appeared on his behalf. Mr. Angima instituted the objection proceedings. There is an order allowing Agnes to be an administrator, no prejudice will be caused to the applicant. That there is no law cited on the issue of substituting a beneficiary.
 6. I have considered the affidavits and submissions by the parties. I have also considered the provisions of order 45 of the *Civil Procedure Rules* on review applications. I have also perused the court record and the court file. Mr. Oira held brief for Mr. Angima as per the court proceedings on the 16th of February 2023. I note that on the said date the firm of Mr. Angima was not record for the applicant. Mr Angima filed his notice of appointment dated the 9th of June 2023 on the 13th of June 2023. Mr. Oira ought not have consented to the application being granted, he ought to have informed the court that their firm is not on record. Mr. Angima has apologized and explained why his firm cannot be held to have consented to the application. Further, I have noted that the applicant in this matter is not an administrator in this estate. It is not in dispute that he obtained a grant of letters of administration ad litem to file suit, as per the limited grant issued to him on the 7th December 2012. The said grant is a limited grant and was for the purposes of filing suit. It did not make the applicant an administrator. For these reasons, I find that there is sufficient cause to set aside the orders issued on the 16th of February 2023 so that the



application is heard on merit. The order substituting Agnes Nakhumincha Wasike in place of Jamin Wasike Chemiati is hereby set aside. The application dated the 4th of February 2023 shall be heard on merit on a date to be given by the court. No order as to costs.

DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 29TH DAY OF NOVEMBER 2023.

R.E. OUGO

JUDGE

In the presence of;

Mr. Angima -For the Applicant

Mr. Bw'Onchiri -For the Respondent

Wilkister -C/A

