



**In re Estate of Ndole Mwakidudu (Deceased) (Succession Cause
48 of 2015) [2023] KEHC 25694 (KLR) (22 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25694 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
SUCCESSION CAUSE 48 OF 2015
SM GITHINJI, J
NOVEMBER 22, 2023
IN THE MATTER OF THE ESTATE OF NDOLE MWAKIDUDU (DECEASED)**

BETWEEN

MBURA EDWARD APPLICANT

AND

**THE ADMINISTRATOR AND FAMILY OF THE ESTATE OF NDOLE
MWAKIDUDU (DECEASED) 1ST RESPONDENT**

THE PUBLIC TRUSTEE 2ND RESPONDENT

AND

PHILIP TUNGU MBURA INTERESTED PARTY

RULING

1. For determination is the application dated 3rd May, 2023 by Mbura Edward seeking the following orders;
 - 1) That pending the hearing and determination of this application the Honourable Court do grant a temporary order of stay of the Estate of Ndole Mwakidudu since there are two more pending applications citation No. 2 of 2019 which is based on the same estate pending hearing and determination of this suit.
 - 2) That pending the hearing and determination of this application this Honourable Court be pleased to stay the proceedings of the Estate of Ndole Mwakidudu at the Public Trustees in Malindi and Citation No. 2 of 2019 which are pending and focused on the same subject matter, pending the hearing of this suit.
 - 3) That the costs of this application be in the cause.



2. The application is supported by the grounds on the face of it and the sworn affidavit of Mbura Edward. He deposed that the matter has other two pending applications, one dated 5th May, 2021 filed by the 1st Interested party and another dated 3rd May, 2023 filed in the Citation Cause No. 2 of 2019. He also deposed that in the said mentioned suit the court had directed the parties to conduct mediation but the same did not happen due to absence of the Public Trustee.
3. In response, the Public Trustee filed a Replying affidavit sworn by Jafred Erima Maliro on the 8th day of May, 2023. He deposed that there exist no proceedings to be stayed as sought or at all, the petition having collapsed upon revocation of the grant herein on 31.10.2018. According to him, Malindi High Court Citation Cause No. 2 of 2019 was rejected by the court and thus the same does not exist. That Mbura Edward the applicant herein is neither a beneficiary nor a party to any of the matters herein and thus is a stranger to the proceedings. In addition, that the applicant lacks locus standi and further that the court became functus officio upon revocation of the grant herein on 31. 10. 2018.
4. He asserted that the applicant has not demonstrated what interest he has against the estate of the deceased and that he will not suffer any prejudice if this application is dismissed for lack of merit as he has no interest in either the alleged Malindi High Court Citation Cause No. 2 of 2019 and the succession cause herein. In the end, he asserted that the Public Trustee was not a party to the alleged Malindi High Court Citation Cause No. 2 of 2019 and thus has no locus in participating in the said matter.
5. The 1st Respondent in response also filed a Replying Affidavit sworn by Kazungu Ndole Mwakidudu on the 9th day of May, 2023. He stated that Citation No. 2 of 2019 is not pending hearing as it was determined on 22nd November, 2021. That before the Citation was heard the 2nd interested party had brought an application to be joined in the citation as an interested party which was dismissed on 21st December, 2020. That the Citation having been conclusively determined there is no pending Citation for which the 2nd interested party can be joined. As such the appeal and the Notice of Motion dated 5th May, 2021 have been overtaken by events. That no reason has been given for the inordinate delay given that the ruling sought to be stayed was delivered on 22nd November, 2021. Similarly, no substantial loss shall be occasioned to the applicant if the order for stay of proceedings is not granted.

Analysis and Determination

6. I have considered the application dated 3rd May, 2023 by the applicant and the responses by both the Public Trustee and the 1st Respondent.
7. The issues for determination are whether the applicant deserves a stay of the Ruling delivered in Citation No. 2 of 2019 on the 22nd day of November, 2021 and whether he has locus standi to institute the present application.
8. I have noted that Citation No. 2 of 2019 is not pending hearing and determination as this honourable court determined it vide the ruling of 22nd November, 2021. The said Citation does not therefore exist, contrary to what the applicant wants this court to believe. I have made reference to the said ruling and it's vivid that this court ruled that the same lacked merit and was rejected. Thus, there are equally no proceeding to stay in relation to Citation No 2 of 2019.
9. Having said so, the prayer for stay is dismissed for being an abuse of the court process.
10. The second issue for determination is whether or not the Applicant herein has locus standi to bring this application. I have perused the record and I note that the applicant is the son of Gladys Mercy Kabibi Mbura (deceased) and Philip Tunga Mbaru. According to him, the widow of Ndole Mwakidudu and



his late mother were present during the purchase of the suit property and that the men were only brought in to assist on the legal aspect. According to him, he now has a legal interest in the said suit property.

11. *Locus standi* is basically the right to appear or be heard in court in the proceedings. That means if one alleges lack of the same in the proceedings, that party cannot be heard, irrespective of whether or not he has a merited cause. The issue herein is whether the Applicant has the requisite locus standi to seek relief from the court in the present application. In my view, issues as regards locus standi are critical preliminary issues which should be dealt with and settled before dwelling into other substantive issues.
12. *In Re Estate of Alfred Mutune Munyao (Deceased)* (2019) eKLR, the Court held as follows:

“9. A perusal of the pleadings indicates that the applicant has not been listed as a beneficiary of the estate of the deceased and his claim cannot be tried in a succession cause. Section 29 of the *Law of Succession Act* is to the effect that a brother of the deceased will only be considered a dependant if maintained by the deceased prior to his death and hence is entitled to the estate of the deceased. In the absence of evidence of maintenance, I am unable to find that the applicant is a beneficiary of the estate of the deceased. Merely stating that the deceased was his brother is not enough for the applicant to lay claim to the estate of the deceased without any proof that he was being maintained by the deceased as a dependant.

12. Looking at the applicant’s pleadings there is no evidence to link him to the estate of the deceased or anything to prove that he was a dependant of the deceased. He has not explained his interest in the properties of the deceased and as such he should not prevent the respondents from administering the estate of the deceased. The chief’s introductory letter dated 29.4.2014 has listed the respondents as dependants of the deceased. The applicant is not indicated as a dependant and as such he had the burden of establishing the same. The applicant has not satisfied me that he is a dependant of the deceased. However, should he have any claim to ownership of the properties of the deceased then he is at liberty to proceed to lodge it at the Environment and Land Court. Entertaining the applicant in the proceeding herein will serve no useful purpose other than to convolute the matter. The applicant has not satisfied this court that he merits the orders he is seeking as he lacks locus standi.”

13. In my view, the decisions of this court in the succession matter will not in any way affect the applicant. He has no locus in this application in relation to the legal interest on the suit property. Having said so, it is the finding of this court that the applicant has no locus standi to bring this application.
14. In the end, I am of the position that the application lacks merit and the same is hereby dismissed.

RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 22ND DAY OF NOVEMBER, 2023.

S.M. GITHINJI

JUDGE

In the absence of:-

Mr Maliro for the Public Trustee



Mr Gicharu for the Interested Party

Mr Shujaa for the 1st Respondent

Parties be notified.

S.M. GITHINJI

JUDGE

22/11/2023

