



**In re Estate of Fanice Matendechele Mwani (Deceased) (Succession Cause 5 of 2019) [2022] KEHC 10960 (KLR) (29 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 10960 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 5 OF 2019  
WM MUSYOKA, J  
JULY 29, 2022**

**RULING**

1. This matter is among those that F Amin J was handling. It was due for mention on 6<sup>th</sup> April 2022. It was handed over to me on 16<sup>th</sup> June 2022.
2. The matter is not due for confirmation, for the order of F Amin J of 30<sup>th</sup> March 2022 is yet to be complied with. It was for the Deputy Registrar to comply, by putting this file together with the file with citation proceedings, which allowed the administrator herein, Wilson Musungu Shitasa, to petition herein.
3. Secondly, the administrator will need to amend the summons dated 14<sup>th</sup> February 2022, for it seeks confirmation of a grant made to Fanice Matendechele Mwani on 17<sup>th</sup> September 2019. Yet the said Fanice Matendechele Mwani is the deceased herein, and the grant made on 17<sup>th</sup> September 2019 was to Wilson Musungu Shitasa.
4. Thirdly, the administrator has not complied with the proviso to section 71(2) of the *Law of Succession* Cap, 160, Laws of Kenya, and Rule 40(4) of the *Probate and Administration Rules*, for he has not identified the relatives of the deceased herein. He is not related to the deceased, and the relatives of the deceased would be her survivors and the persons beneficially entitled to the estate.
5. Finally, there is no compliance with rule 40(4) and (8) of the Probate and Administration Rules, which would require that the application herein will have been served on the immediate relatives of the deceased, her children or grandchildren, and any surviving spouse, for them to file the affidavit of protest envisaged in Rule 40(4) or to execute the consents in Form 37 envisaged in 40(8).
6. Fifthly, the administrator did not comply with Rule 41(1) of the Probate and Administration Rules, for when he attended court on 30<sup>th</sup> March 2022, for confirmation of his grant, or at the hearing of his application, he did not avail the surviving spouse or the surviving children of the deceased or the relevant survivors of the deceased.



7. The application is not ripe for determination, before the administrator addresses all the five issues that I have referred to above, let him comply with the same. I shall allocate a date for mention for compliance, at the delivery of this ruling.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 29th DAY OF JULY 2022**

**W.M. MUSYOKA**

**JUDGE**

