



**Yockbag v Wettstein & 2 others (Citation Cause E042 of 2022)
[2022] KEHC 11279 (KLR) (29 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11279 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CITATION CAUSE E042 OF 2022**

JO NYARANGI, J

JULY 29, 2022

IN THE MATTER OF THE ESTATE OF MANFRED WALTER SCHMITT (DECEASED)

BETWEEN

JEANNE NGO YOCKBAG APPLICANT

AND

URS WETTSTEIN 1ST RESPONDENT

ANDREAS WETTSTEIN 2ND RESPONDENT

SOPHIE SCHMITT 3RD RESPONDENT

RULING

1. The deceased herein Manfred Walter Schmitt a Germany national is said to have died on December 27, 2017 while domiciled in Germany. Since then, nobody has petitioned for a grant of representation. Consequently, Jeanne Ngo Yockbag a Cameroon national claiming to have been an intimate life partner to the deceased moved the court by way of citation dated May 9, 2022 citing Urs Wettstein a business partner to the deceased to show cause why he should not petition for a grant of probate of written will being the deceased's appointed executor vide a will dated August 28, 2017.
2. She averred that being one of the beneficiaries to the estate, she has a right to demand that; the citee does petition for a grant of representation; stop intermeddling with the estate and in default; the court to allow her petition for the grant.
3. In her affidavit in support of the citation sworn on the May 9, 2022, she named Urs Wettstein as the 1st respondent, Andreas Wettstein also a brother to the citee and a business partner then to the deceased as the 2nd respondent and Sophie Schmitt a daughter to the deceased as the 3rd respondent.
4. It is the citor's claim that despite every effort made in persuading the citee to petition for a grant of representation, he has been adamant and reluctant to do so hence the instant application(citation).



- She further stated that the citee has intermeddled with the estate hence the reason why he does not want to apply for a grant. That as a beneficiary to the estate, she has every right to petition for a grant in place of the executor.
5. In response, the citee filed a replying affidavit sworn on May 26, 2022. He stated that he was a close friend and business partner to the deceased who appointed him on August 28, 2017 as an executor which appointment was expressed through an intended will that he (deceased) never executed. According to him, the deceased died without preparing nor executing a will.
 6. He averred that owing to prolonged sickness of the deceased, he (deceased) expressed fear of his inability in not leaving anything for inheritance to his daughter Sophie Schmitt and girlfriend (the citor) in case he died. That out of his own volition and in appreciation of the love he shared with the deceased like a brother, he (citee) decided to honor the deceased's wishes in a letter of introduction dated 7th September 2017 wherein he volunteered to give a share of his assets to the deceased's daughter and girlfriend (citor) to meet the deceased's desire in the event he died. He however expressed his willingness to petition for a grant of letters of administration intestate for purposes of administering the estate of the deceased
 7. When the matter came up for hearing, Mr Murgor senior counsel urged the court to direct the citee to petition for a grant of probate of written will and not as an intestate estate. That there is sufficient evidence indicating that the deceased did execute a will in Germany hence the need to petition for a grant of probate.
 8. On the other hand, Mr. Mitto counsel appearing for the citee reiterated the averments contained in the replying affidavit. He averred that the purported will was a deed of appointment and not a will. That in any event, this court has no jurisdiction to entertain and make a determination on a will executed in Germany. He expressed the position that the citee was willing to petition for a grant of letters of administration in obedience to the wishes expressed by the deceased.
 9. I have considered the citation herein, responses thereof and oral submissions by both counsel. The only issue which crystalizes for determination is whether the citee is ready and willing to petition for a grant of representation. According to the citor who claims to have been a life partner to the deceased but not married, the deceased left a will which made provision for her as a beneficiary.
 10. She averred that the citee who is the appointed executor has refused to petition for a grant of probate of written will. On the other hand, the citee is arguing that he was appointed as an executor /trustee of the deceased's estate by a deed of appointment and not a will. That the deceased intended to sign a will but died before executing one.
 11. On her part, the citor produced a document entitled "ordering of execution of a will" duly signed before a notary public in frankfurt Germany.
 12. Under section 22 (1) of P &A rules, a citation may be issued out 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.
 13. Sub rule (2) further provides that, where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the interest of the executors who have proved the will of the last survivor of such executors or of any beneficiary under the will.
 14. The citee is disputing the existence of a will appointing him as the executor. Instead, he is willing to petition for a grant of letters of administration intestate. Sophie the only named child to the deceased has taken a back seat yet under intestate proceedings she ranks first in order of priority pursuant to section 66 of the [Law of Succession Act](#).



15. The dispute over the existence and or validity of the will drawn in Germany is not a matter to be deliberated under a citation application. It is a matter to be canvassed in objection proceedings after initiation of an application/petition for grant of representation whether a grant of probate of written will or grant of letters of administration intestate or a grant of letters of administration with will annexed.
16. Since the citee is willing to petition for a grant of representation, he should be given an opportunity to do so without being directed which particular grant to seek. If he petitions for a wrong grant, then, the aggrieved party will come in and object or file relevant objection proceedings.
17. On the other hand, if the citee who is the alleged executor fails to act, the deceased's daughter shall have a right to petition for a grant of letters of administration with will annexed in the event the will is acknowledged or a grant of letters of administration intestate in case she does not recognize the will.
18. At this stage, citation proceedings is not a proper avenue to entertain objection proceedings and the element of lack of jurisdiction. In my view, it is not for the court to determine or direct in a citation application the nature of a grant to petition. To do so will be tantamount to premature determination over the existence or validity of a will.
19. In the circumstances, I cannot direct the citee to specifically petition for such and such a grant. I will leave it open for the citee to make his decision in accordance with the law to petition for a grant of representation within 30 days in default, the 3rd respondent Sophie Schmitt a daughter to the deceased to appropriately move the court by petitioning for a grant of representation within 30 days and in default, the citor being one of the alleged beneficiaries in the disputed will shall be at liberty to petition for a grant of representation in accordance with the law.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 29TH DAY OF JULY, 2022

.....

J. N. ONYIEGO
JUDGE

