



REPUBLIC OF KENYA



KENYA LAW
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**Chemonges v Musiwa & another (Civil Case 1 of 2022)
[2022] KEHC 12411 (KLR) (Civ) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12411 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 1 OF 2022

AO MUCHELULE, J

JULY 28, 2022

**IN THE MATTER OF THE ESTATE OF JENNIFER
KUSURO MUSIWA (DECEASED)**

BETWEEN

RASHID HASSAN CHEMONGES APPLICANT

AND

TONY MUSIWA 1ST RESPONDENT

LUCY NYATHIKA 2ND RESPONDENT

RULING

1. This matter was originated by way of a plaint dated 26th January 2022 by Rashid Hassan Chemonges (the plaintiff/applicant) against Tony Musiwa and Lucy Nyathika (the respondents/respondents) alleging that the latter had intermeddled with and/or illegally taken away the property belonging to the estate of the deceased Jennifer Kusuro Musiwa who died on 17th April 2019. The properties were enumerated. The prayers were a declaration that the respondents had intermeddled with the estate property; an order for the return of the taken property and; an order of permanent injunction to stop the interference. The applicant pleaded that he was one of the administrators of the estate of the deceased and that the interference with, and taking away of, the estate of the deceased was without the authority of the administrators.
2. With the suit was a notice of motion seeking restraining orders against the respondents.
3. This dispute was filed in the High Court Civil Division. Justice Sergon of the Division on 1st February 2022 noted that his was a matter for this Division and transferred it accordingly.



4. Because of the reference to a grant by letters of administration intestate issued by this court in respect of the estate of the deceased Jennefer Kusuro Musiwa, I called for and checked the Succession Cause No. E1119 of 2021 in respect of the grant. It is evident that the applicant was one of the four petitioners to whom the grant was issued on 25th October 2021. In the succession cause the 1st respondent in summons dated 26th November 2021 has sought the revocation of the grant that was issued to the petitioners including the applicant. He claimed to be a son to the deceased and beneficiary of her estate; and that the grant was fraudulently issued to the petitioners without reference to him. On 30th May 2022 Justice Achode (PJ) who is seized of the matter directed that the summons for the revocation of the grant be heard in open court on 7th and 14th November 2022.
5. It is also notable that in the succession cause, there is an application dated 16th March 2022 by the applicant against the 1st respondent seeking that, among other things, he should be restrained from interfering with the estate of the deceased. The 1st respondent has filed a replying affidavit. The application was on record when the court directed that it would hear the summons for the revocation of the grant.
6. It is clear to me that the substantive dispute between the parties in the instant application is before the Succession Court in Succession Cause No. E1198 of 2021. The grant that is the basis of the applicant's complaint in the instant proceedings has been questioned in the succession cause and the court therein is already inquiring into that grant. For the proper administration of justice, and so that there is no likelihood of embarrassment in case conflicting orders are given, I order that this application be mentioned by the Judge in Succession Cause No. E1198 of 2021 on 7th November 2022 for further directions.
7. Costs be in the cause.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF JULY 2022.

A.O. MUCHELULE

JUDGE

