



REPUBLIC OF KENYA



KENYA LAW
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**Ngui & 2 others v Nthenge (Succession Cause 193 of 2008)
[2022] KEHC 11477 (KLR) (3 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 11477 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 193 OF 2008
GV ODUNGA, J
AUGUST 3, 2022**

BETWEEN

STEPHEN MUSEMBI NGUI 1ST PETITIONER

THOMAS MUTINDA NGUI 2ND PETITIONER

JOHN NDONYE MUTUNGI 3RD PETITIONER

AND

DAVID MUTISO NTHENGE OBJECTOR

RULING

1. On 28th March, 2018, this Court (Nyamweya, J, as she then was) delivered a ruling in this Cause in which she dismissed the objection and Petition by way of Cross-Application by the Objector and directed that the grant of the written Will of the deceased herein dated 21st March, 1996 and codicil dated 6th September, 1999 be granted to the surviving Petitioners who were named executors in the Deceased's will of 21st March, 1996, and with respect to the properties provided in the said Will and Codicil.
2. By Chamber Summons dated 11th January, 2019, the Petitioners sought inter alia for the Confirmation of the Grant; for an order that land parcel No. Machakos Town Block 11/319 does not form part of the deceased's estate since its purchase price was partly paid for by the deceased and the property registered in the names of the deceased's daughters; that Machakos Town Block 11/318 which was acquired by the deceased before his death be entrusted to the executors for distribution at their discretion; and that the order issued herein on 28th March, 2018 in respect of the two properties be vacated and the monies deposited pursuant thereto be released to the Executors for distribution to the beneficiaries.
3. The bone of contention is that the two properties were not expressly provided for in the deceased's Will. Therefore, according to the Objector, the distribution of the same ought to be determined by the



law relating to intestacy. The Petitioners on the other hand contend that the Will contained a provision for dealing with the same.

4. However, after the parties filed the submissions in respect of the issue, on 8th March, 2021, the Objector passed away and no one has to date taken out the letters of administration in respect of his estate. It is the Petitioner's case that Counsel for the Objector cannot represent the dead and has no audience in this case until a personal representative of the deceased objector is appointed. In those circumstances, it is sought that the Court direct that the Court order that directed that the sums be deposited in the joint account be vacated and the monies therein be released to the Petitioner's Advocates and that the Petitioners do proceed to Administer the Estate as directed by the Will and the Codicil.
5. The issue before me at this stage is not the manner in which the two properties in contention ought to be distributed. Rather it is the manner of proceedings following the demise of the deceased Objector. I agree that since the Objector is deceased and no grant of letters of administration in respect of his estate have been made, Mr Odawa can no longer continue representing the said Objector since he no longer has a client to represent. On the other hand, no orders can be made in respect of the application dated 11th January, 2019 which had been prosecuted by way of written submissions and was pending the ruling.
6. However, pursuant to Order 24 rules 3 and 4 of the Civil Procedure Rules, matters do abate when no substitution has been made within one year. While the said provisions do not expressly apply to succession matters, rule 73 of the Probate and Administration Rules provide that:

Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.
7. In my view, where a person files an objection and passes away and none of the beneficiaries of his estate in ready and willing to take up the objection, the Court cannot leave the matter in limbo indefinitely. It is upon the beneficiaries of the Estate of the deceased objector, if they so wish, to take the necessary steps to substitute the deceased objector within a reasonable period. By parity of reason it is my view that just like in ordinary civil matters that substitution ought to be undertaken within one year from the date of the death of the Objector. In absence of such step being taken in the proceedings, the Objection and any other application made pursuant thereto ought to abate of course with the liberty to apply for revival.
8. In the premises, I find that the proceedings that were initiated by the Objector herein who is now deceased have abated. Accordingly, I direct that the order made by Nyamweya, J (as she then was) herein on 28th March, 2018 directing that the receipts of rents in respect of the two aforesaid properties in Account No. xxxxxxxxxx in Credit Bank be vacated and the said account closed. The said sum be released to the Petitioners' advocates for distribution in accordance with the deceased's Will and Codicil. The Petitioners do proceed to administer the Estate of the Deceased as directed by the said Will and Codicil.
9. It is so ordered.

RULING READ, SIGNED AND DELIVERED IN OPEN COURT AT MACHAKOS THIS 3RD DAY OF AUGUST, 2022.

G. V. ODUNGA

JUDGE

In the presence of:



Mr Masika for the Petitioners

CA Susan

