



REPUBLIC OF KENYA



**In re Estate of Elizabeth Wangari Muturi (Deceased) (Succession Cause E847 of 2020) [2022] KEHC 14205 (KLR) (Family) (26 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14205 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E847 OF 2020  
AO MUCHELULE, J  
OCTOBER 26, 2022**

**BETWEEN**

**ROY PHILIP NYAGA MWANGI ..... 1<sup>ST</sup> APPLICANT  
SHEILA WANJIRU MUMO ..... 2<sup>ND</sup> APPLICANT  
WENDY ELIZABETH WANGARI MWANGI ..... 3<sup>RD</sup> APPLICANT  
DEREK NJUGUNA MWANGI ..... 4<sup>TH</sup> APPLICANT**

**AND**

**CHARLES IRUNGU ..... 1<sup>ST</sup> RESPONDENT  
JAE WAMBUI NJUGUNA ..... 2<sup>ND</sup> RESPONDENT  
JOHN WAWERU NJUGUNA ..... 3<sup>RD</sup> RESPONDENT  
GEORGE CHEGE NJUGUNA ..... 4<sup>TH</sup> RESPONDENT  
LUCY WANJIRU GITAU ..... 5<sup>TH</sup> RESPONDENT  
CHRISTINE MUTHONI NJUGUNA ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. The deceased Elizabeth Wangari Muturi died intestate on May 7, 2011 at Nairobi. Her children were Charles Irungu (1<sup>st</sup> respondent), Jane Wambui Njuguna (2<sup>nd</sup> respondent), John Waweru Njuguna (3<sup>rd</sup> respondent), George Chege Njuguna (4<sup>th</sup> respondent), Lucy Wanjiru Gitau (5<sup>th</sup> respondent), Christine Muthoni Njuguna (6<sup>th</sup> respondent), the late Margaret Njeri, the late William Kariuki and the late James Mwangi Njuguna.



2. The applicants Roy Philip Nyaga Mwangi, Sheila Wanjiru Mumo, Wendy Elizabeth Wangari Mwangi and Derek Njuguna Mwangi are the children of the late James Mwangi Njuguna, and therefore the deceased's grandchildren. In their application dated September 18, 2020 under section 47 of the [Law of Succession Act](#) (Cap. 160) and rules 49, 59 and 73 of the [Probate and Administration Rules](#) they sought a temporary injunction against the respondents to restrain them and their agents/servants from intermeddling with, distributing and/or sharing the rental income from Dagoretti/Kangemi/T.450 and Nairobi/Kangemi/141 which they said belonged to the estate of the deceased, and which were generating about Kshs.298,700/= and Kshs.163,500/=, respectively, per month. Their case was that the respondents were sharing the rent equally every month to their exclusion.
3. The response was filed by the 3<sup>rd</sup> respondent who opposed the application and stated that the applicants lacked capacity to make the application as they had not obtained a grant of letters of administration intestate in respect of the estate of the deceased. He stated that they (the respondents) were in the process of applying for a grant, following their being cited by the applicants in these proceedings. Thirdly, he deponed that Dagoretti/Kangemi/T. 450 did not form part of the estate of the deceased as its owners were himself, Jane Njuguna and Lucy Wanjiru Gitau, and he annexed a certificate of lease to that effect. He produced title deed for Dagoretti/Kangemi/S.141 to show that it belonged to the deceased and further produced title deed for Dagoretti/Kangemi/625 which he stated belonged jointly to the deceased and George Chege Njuguna. Fourthly, he denied that the respondents were intermeddling with the deceased's estate when all that they were doing was to collect rent.
4. The 1<sup>st</sup> applicant swore a further affidavit in which he took issue with the replying affidavit saying that it had been deponed that he had the authority to the other respondents to swear the response, and yet he had not exhibited the authority. He asked that the response would be deemed to be only that of the 3<sup>rd</sup> respondent. In the response, the 3<sup>rd</sup> respondent had indicated that the applicants should wait for the conclusion of Succession Cause No. 1349 of 2016 to benefit therein. The 1<sup>st</sup> applicant's assertion was that the cause had begun with a citation, and that the matter had been concluded through a mediation in which the administrators had been identified. The applicants intend to apply to have the land cases consolidated. The two causes relate to the same estate of the deceased.
5. The respondents filed a notice of preliminary objection dated October 28, 2020 stating that the applicants lacked the locus standi to bring the application at hand.
6. Directions were given that the objection and the application be heard together, and the advocates for the parties filed respective written submissions.
7. The facts not in the dispute are that the deceased died intestate, she left an estate and that the estate has no administrator as none has been appointed. No grant of letters of administration has been issued to either side. Under section 82(a) of the [Act](#) the person to whom a grant of letters of administration has been issued is the one who can enforce, by suit or otherwise, all causes of action which, by virtue of any law, surviving the deceased or arising out of his death for his personal representative. Without grant, therefore, the applicants have no capacity to sue to enforce any rights they may have over the estate of the deceased. Indeed, the Court of Appeal in [Rajesh Pranjivan Chudasama –v- Sailesh Pranjivan Chadasama](#) [2014] eKLR, citing [Otieno –v- Ougo & Another](#) [1986-1989] EALR 466, held that a litigant is clothed with locus standi upon obtaining a limited or full grant of letters of administration in a case of intestate succession before he came to claim any right or relief over the estate of the deceased. The applicant can therefore not be heard, despite the merits of their grievances.
8. This finding is sufficient to dispose of this matter. The objection taken out by the respondents is sustained with costs, and the application by the applicants truck out with costs for being incompetent.



**DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 26<sup>TH</sup> DAY OF OCTOBER, 2022.**

**A.O. MUCHELULE**

**JUDGE**

