



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE NO. 4 OF 2020

RE ESTATE OF ELIZABETH WANJIRU MAINA [DECEASED]

HENRY KIMANI THAIRU.....APPLICANT

VERSUS

JANE GATHONI MAINA & ANOTHER.....RESPONDENTS

RULING

1. The applicant has petitioned for a grant of letters of administration *ad litem* under section 54 of the **Law of Succession Act** as read with section 14 of the *Fifth Schedule* of the Act.
2. The summons is dated 10th March 2020 and supported by a deposition of even date.
3. The brief background is that the deceased, Elizabeth Wanjiru Maina, died intestate on 12th May 2011. The two respondents are her surviving daughters. They have however declined or shown unwillingness to apply for a grant to the estate.
4. The applicant had sued the deceased as the 4th defendant in *Murang'a ELC Case No. 30 of 2018* now pending at the Environment and Land Court at Murang'a. He now seeks to have the Public Trustee appointed as the administrator for purposes of defending the suit.
5. The respondents were served but did not file a reply.
6. The applicant filed submissions with a list of authorities on 10th July 2020. On 14th July 2020, learned counsel informed the court that he wished to rely entirely on his written submissions.
7. I readily find that the averments in the affidavit are uncontroverted and I accept them to be true. However, the summons is on a legal quicksand. It is not lost on me that the applicant has *nominated* the Public Trustee to be the administrator so that he can become a defendant in the land case.
8. The summons finds support in section 14 of the *Fifth Schedule* of the **Law of Succession Act** which provides as follows:

When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution. [underlining added]
9. The court has discretion in such a matter. However, section 7 of the **Public Trustee Act** provides as follows:

Where the particular circumstances of any case appear to the court so to require, the court may, if it thinks fit for reasons recorded in its proceedings, of its own motion or otherwise, after having heard the Public Trustee, grant under the Law of Succession Act (Cap. 160) letters of administration to the Public Trustee notwithstanding that there are persons who, under that Act or any other written law, would in the ordinary course be legally entitled to administer the estate of the deceased person concerned in preference to the Public Trustee. [underlining added]
10. The Public Trustee is a public office. He was neither enjoined as a party to the present proceedings nor was he served. He has obviously not been *heard* to determine whether this is a suitable matter to undertake the responsibilities under sections 6 or 17 of the **Public Trustee Act**; or, whether the public should bear the burden and costs of defending the claim of land by the applicant in the Environment and Land

Court.

11. The upshot is that the applicant's summons is defective in both form and substance. It is hereby *dismissed* with no orders as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 28TH DAY OF JULY 2020

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:-

Mr. M. N. Ndung'u for the applicants instructed by Mawira & Ndung'u LLP Advocates.

No appearance by the respondents.

Ms. Dorcas Waichuhi & Ms. Susan Waiganjo, Court Assistants.