



In re Estate of Petro Kiriuki Wachira (Deceased) (Succession Cause 236 of 1994) [2025] KEHC 3236 (KLR) (18 February 2025) (Ruling)

Neutral citation: [2025] KEHC 3236 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 236 OF 1994
HI ONG'UDI, J
FEBRUARY 18, 2025**

IN THE MATTER OF THE ESTATE OF PETRO KIRIUKI WACHIRA (DECEASED)

BETWEEN

JAMES KARIUKI KARANJA APPLICANT

AND

LAWRENCE KAGAI KARIUKI 1ST PETITIONER

LUCY WANJIRU NJOROGE 2ND PETITIONER

STEPHEN RAGUI KARIUKI 3RD PETITIONER

AND

LAWRENCE KARIUKI KARANJA BENEFICIARY

RULING

1. This ruling is in respect of the Notice Motion dated 14th November, 2022 where the applicant seeks the following orders;
 - i. -v- Spent.
 - vi. That upon hearing exparte, the honourable court be pleased to order that the 1st Petitioner, the 3rd Petitioner and the owner of phone no.0722XXXX60 (Jonh Wanyoike) (sic) to appear in person before this honourable court to disclose the source of the court's ruling of 19th July 2022, the court's order dated 16th September 2022 and the application dated 7th September 2021 alleged to be of the applicant herein if there is any in the court's file.
 - vii. That upon issuance of the above orders, the honourable court be pleased to direct the police or the DCI office to investigate and to arraign in court of law all persons who were involved in fraudulent process of preparing and creating the court's ruling of 19th July 2022, the court's



order dated 16th September 2022 and the alleged Applicant's application dated 7th September 2021.

- viii. That the honourable court be pleased to review/ set aside the orders of 19th July 2022 mentioned above and consequently be pleased to declare the said orders as null and void.
 - ix. That the honourable court be pleased to review /set aside and vacate it's orders of 8th February 2013 (in a ruling dated 8th February 2013) and all the consequential orders issued thereafter and consequently declare the said orders as null and void.
 - x. That upon the issuance of order no.9 above the honourable court be pleased to mark the application dated 6th June (sic) as withdrawn in accordance with the orders of this court of 25th October 2012.
 - xi. That the honourable court be pleased to direct the Kisumu sub county Land Registrar to rectify the register for parcel no. Kisumu Manyatta 'A' 4397 by substituting the names of Lawrence Kagai Kariuki with that of Lawrence Kariuki Karanja.
 - xii. That the honourable court be pleased to direct the Nakuru sub county Land Registrar to rectify the register for parcel no. Elburgon Arimi Ndoswa block 4/319 (half of Elburgon land) by substituting the names of Margaret Wanjiru Kariuki with that of Petro Kariuki Wachira (the deceased herein).
 - xiii. That the honourable court be pleased to declare that the property known as Kisumu East Kanyakwar' B'61 (Kisumu Town Plot no.12) which was transferred to Joseph Otuoma on 21st August 2014 contrary to the deceased will as illegal and fraudulent and subsequently revoke the title deed issued to Joseph Otuoma and the same be reverted in the names of the deceased herein.
 - xiv. That the honourable court be pleased to declare that the property known as Kijabi/Kijabi Block1/18499 (half of Mai Mahiu land) which was transferred to Ruth Nduta on 18th February 2015 contrary to the lands Act and to the will of the deceased herein as illegal and fraudulent and consequently revoke and cancel title deed issued to Ruth Nduta and the same be reverted in the name of deceased herein.
 - xv. That upon issuance of the order no. 12, 13 and 14 above, the honourable court be pleased to order that the properties known as Elburgon Arimi Ndoswa block 4/319 (half of Elburgon land), Kijabe Kijabe block 1/18499(half of Mai-mahiu land) and Kisumu Kanyakwar/B/61 (Kisumu town plot No.12) be strictly distributed among the beneficiaries bequeathed on in the deceased will.
 - xvi. That the honourable court be pleased to mark the succession cause no.236 of 1994 as closed matter.
 - xvii. That cost of this application be provided for.
2. The said application is premised on the grounds on its face as well as the lengthy affidavit of the applicant sworn on even date. He deponed among other things that the orders sought in his application were necessary in order to end further abuse of the court process by the petitioners herein. Further, that there was an error apparent on the face of the record to warrant granting of the orders sought. He added that he stood to suffer grave and irreparable loss unless the orders sought are granted.
 3. In response to the application, the petitioners filed a replying affidavit dated 19th April 2023 sworn by the 1st petitioner. He averred that the applicant's application was inept, incompetent, misconceived



mala fides and an abuse of the court process. Further, that the applicant had no capacity to institute the application since he was neither an administrator and/or beneficiary of the deceased's estate. That his father Lawrence Karanja Kariuki was the beneficiary of the estate and not him. He added that it was crystal clear that the issues raised by the applicant could only be resolved by the compliance of the orders issued by this honorable court on 23rd May 2019 as the same squarely laid out the distribution of the deceased's estate.

4. The application was canvassed by way of written submissions

Applicant's submissions

5. These were filed by the applicant acting in person and are dated 11th July, 2024. He duplicated the prayers in his application and submitted on them. Regarding the error on the face of the court's record, he submitted that the Court made an error on 8th February 2013 by re-determining the application dated 6th June 2012 through the ruling dated 8th February 2013 despite having earlier ruled on same matter on 25th October 2012.
6. He further submitted that the court donated its inherent jurisdiction in the said application to the Environment and Land Court (ELC) and ordered counsel to transfer the said matter from the Succession file and to ELC. Thus, the Court made an error on 8th February 2013 when it handled the matter it had no jurisdiction in. He cited the locus classicus decision in Owners of the Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd [1989] <KLR 1 where the Court held as follows:

"jurisdiction is everything, without it a court has no power to make any more step. Where a court has no jurisdiction there would be no basis for a continuation of the proceedings pending other evidence. A Court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."
7. Regarding the errors in the deceased's will, he submitted that there were some errors in the will dated 9th January 1994 where some properties were referred in titles/names different from the ones appearing in the Land registries at Sub County Land Offices. He went ahead and listed the said properties. Further, that the 1st petitioner took advantage of the said errors and facilitated the illegal transfer of the deceased's assets.
8. He further submitted that the 1st petitioner had not filed any formal application in this court in accordance with the directions given by Justice Joel Ngugi on 12th March 2020 and neither had he made any attempt to implement the orders on the court's record as per the directions issued by Justice A.K. Ndung'u on 23rd May 2019. That his conduct showed that he lacked good will to assist the Court in solving the dispute in the deceased's estate. He urged the court to invoke the power given to it under sections 46 and 47 of the civil rule (sic) to protect the beneficiaries named in the deceased's will and their children from unnecessary harassment from an unfaithful administrator.

Petitioner's submissions

9. These were filed by A. Mukira & Associates Advocates and are dated 26th July, 2024. Counsel gave a summary of the application, his client's response to the same and identified two issues for determination.
10. The first issue is whether the applicant has capacity to bring the current application. Counsel submitted in the negative and cited section 82 of the Law of Succession and the decision in Kipng'etich



Kalya Kones (suing as the administrator of the Estate of Kipkalya Kones) (deceased) vs William Kiplangat Kones [2021] eKLR where the court held as follow;

“It should be pointed out that the provisions of Section 82 *Law of Succession Act* can only be fully exercised by a substantive administrator which is the person holding not a Limited Grant but a full Grant, likewise the duties imposed by Section 83 of the Act are to be discharged to the fullest by the holder of substantive Grant of Representation as decided in Re the estate of Helina Wangechi Nioroge (deceased) 2015 eKLR”

11. The second issue is whether this court has the jurisdiction to issue the orders sought. On this counsel submitted that this court had no jurisdiction to grant prayers 11, 12, 13 and 14. He cited the decision in Peter Jingara v IEBC & 2 Others [2012] eKLR where the court expressed itself as follows;

“it is our considered view that passage of time does not and cannot confer jurisdiction; jurisdiction is a continuum jurisdiction cannot lack today and by passage or lapse of time exist however jurisdiction is either present ab initio or absent forever”

12. He further submitted that the applicant had never been a party to previous applications filed in which he seeks review. That all were filed by the beneficiary hence the applicant could not seek review of orders in a matter he was not a party. He urged the court to dismiss the applicant’s application with costs.

Analysis and determination

13. I have considered the application herein, the affidavits and the submissions by the parties. I find two issues falling for determination namely;

- i. Whether the applicant has locus standi to institute the application dated 14th November 2022.
- ii. Whether this court has jurisdiction to determine the application dated 14th November 2022.
- iii. Whether the applicant is entitled to the orders sought.

Whether the applicant has locus standi to institute the application dated 14th November 2022.

14. It is the 1st petitioner’s contention that the applicant has no capacity to institute the present application since he is neither an administrator and/or beneficiary of the deceased estate. That his father Lawrence Karanja Kariuki was the beneficiary of the estate and not him. The applicant under paragraph 6 of the affidavit in support of his application deponed that the beneficiary therein was his father and the 1st and 3rd petitioners were his uncles (brothers to his father).

15. It is trite law that pleadings filed in court by persons with no locus standi are void ab initio and the court does not have jurisdiction over such. In Ibrahim V Hassan & Charles Kimenyi Macharia, Interestedparty [2019] eKLR the court held as follows;

“Locus standi is basically the right to appear or be heard in court or other proceedings. That means if one alleges the lack of the same in certain court proceedings, he means that party cannot be heard, despite whether or not he has a case worth listening.....In my view, issues as regards locus standi are critical preliminary issues which must be dealt with and settled before dwelling into other substantive issues.”

16. Considering at the arguments by both parties, my appreciation of the matter at hand is that the applicant herein brought this summons before court as an interested party since his father who is still



alive is a beneficiary of the deceased's estate. It is undisputed that the applicant is a grandchild of the deceased. A grandchild is a direct heir to the estate of the grandparent where the parent predeceased the grandparent.

17. In addition, grandchildren only get into the shoes of their deceased parents and take the parent's share in the estate of the grandparents as was enunciated in the case of *Re Estate of Wahome Njoki Wakagoto* [2013] eKLR where it was held: -

“Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.” (Emphasis mine)

18. This is not the case in this matter as there is no doubt that the applicant's father is still alive and has even been enjoined in the application as a beneficiary. Thus, the person who has the right to file such an application is the applicant's father who is a direct beneficiary to the deceased's estate and not the applicant. In my humble view, it is clear that the applicant has no locus standi to file such an application and is therefore not rightfully before this court to fight for the interests of his father with regard to the deceased's estate. No evidence was adduced by the applicant to show that his father could not act for himself or that he had given him authority to represent his interest in this succession cause. Moreover, there is a rightfully appointed administrator to the estate of the deceased who is vested with the powers under section 82 of the [Law of Succession Act](#) to articulate the issues raised by the applicant in his application.
19. Consequently, I find that the application dated 14th November 2022 is not merited and the same is hereby dismissed.
20. Each party to bear its own costs.

DELIVERED, VIRTUALLY DATED AND SIGNED THIS 18TH DAY OF FEBRUARY, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

