In re Estate of Johana Murage (Deceased) (Succession Cause 282 of 1998) [2025] KEHC 3076 (KLR) (17 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3076 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYERI

SUCCESSION CAUSE 282 OF 1998

MA ODERO, J

MARCH 17, 2025

IN THE MATTER OF THE ESTATE OF JOHANA MURAGE (DECEASED)

RULING

1. Before this Court for determination is the Summons dated 27th November 2023 by which the Applicant Patrick Muhoro Murage seeks the following orders;-

   "(1) That this Honourable Court be pleased to substitute Mary Wachuka Murage (Deceased) with the Applicant Patrick Muhoro Murage by virtue of the grant ad Litem dated 17th November 2023 issued by the honourable court.

   (2) That the cost of this application be in the cause."

2. The application was supported by the Affidavit of even date sworn by the Applicant.

3. The Respondents Paul Githinji Murage And Joseph Gicheha Murage filed a Replying Affidavit dated 16th July 2024 opposing the application.

4. The matter was canvassed by way of written submissions. The Applicants filed the written submissions dated 5th August 2024. The Respondents despite having been accorded several opportunities to comply failed to file any written submissions.

Analysis And Determination

5. This Succession Cause relates to the estate of the late John Murage Gikonyo (hereinafter the Deceased') who died intestate on 14th September 1993. The Deceased was survived by two (2) widows Esther Wanjiku Murage And Mary Wachuka Murage and eight (8) children.

6. Following the demise of the Deceased the Court on 10th June 1999 issued a Grant jointly to Paul Githinji Murage and Mary Wachuka Murage. The Grant was duly confirmed on 8th March 2002.

7. Thereafter one of the Administrators Mary Wachuka Murage passed away on 25th August 2018. A copy of the Death Certificate Serial No. 0401746 appears as annexture 'PMM-2' to the Applicants Supporting Affidavit dated 27th November 2023.

8. The Applicant who is the son of Mary Wachuka Murage now seeks to be appointed as Administrator to replace his late mother. The Applicant avers that in her written will dated 24th June 2011, Mary Wachuka Murage appointed him as Executor. The Applicant further avers that he holds a limited Grant Ad Litem issued to him on 17th November 2023 authorizing him to substitute the late Mary Wachuka Murage in this Succession Cause No. 282 of 1998.

9. Firstly the Applicant must understand that the present cause and the succession cause of his late mother being P & A No. 66 of 2023 filed in the Chief Magistrates Court in Nyeri are two separate and distinct succession causes. The Applicant can only act on behalf of the estate of his late mother. The Grant Ad Litem issued to him does not give the Applicant authority to step into the shoes of his late mother 'as Administrator' of the estate of the Deceased herein.

10. Where two or more persons are appointed as joint administrators of an estate and one dies then Section 81 of the Law of Succession Act will come into play. Section 81 provides that

> "Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors of survivor of them....." [own emphasis]

11. In this case only one of the Administrators has passed away. The other Administrator is still alive and as such under the terms of Section 81 all the powers and duties of administering the estate of the Deceased will now vest in Paul Githinji Murage who is the surviving administrator.

12. In Re Estate Of Elijah Oktah Mikah Tsimbwele (Deceased) [2021] eKLR, Hon. Justice Musyoka stated that

> "The death of one or more administrators does not affect the grant, in terms of rendering it invalid or inoperative or useless. Under Section 81 of the Act, the powers and duties of personal representative rest in the surviving personal representative on the death of one of them. Section 76 (e) of the Act only applies where there is a sole administrator who then dies....." [own emphasis]

13. As such the estate of the Deceased is properly represented for purposes of administration. There is no need for appointment of an additional administrator unless the beneficiaries so wish.

14. The next question that arises is whether the Applicant being a son to Mary Wachuka Murage and therefore a grandson to the Deceased has sufficient interest in this succession cause. Does his appointment as holder of a Grant Ad Litem in respect of the estate of his late mother (who was a beneficiary of the estate of the Deceased herein) bestow upon the Applicant 'Locus Standi' to participate in this Succession Cause as a beneficiary.

15. The persons who have proper 'locus standi' in a succession cause are the legal heirs/beneficiaries of the estate. The Applicant would only qualify as an interested party if he was able to demonstrate that he was a dependant of the Deceased in terms of Section 29 of the *Law of Succession Act*.

16. The Deceased in this matter was survived by a spouse who later died. The Deceased is however survived by several children including the Respondent. The the children of the Deceased rank in priority to be granted letters of Administration to the estate.

17. In the case of Mercy Njoki Irungu vs. Lucy Wamuyu Maruru [2016] eKLR the court held as follows:-

> " It is a requirement that a party to a probate claim must have 'interest' in the estate. The foundation of title to be a party to a probate or administration action is "interest" – so that whenever it can be shown that it is competent to the Court to make a decree in a suit for probate or administration, which may affect the interest or possible interest of any person [2] such person has a right to be a party to such a suit in the character either of plaintiff, defendant, protestor or intervener.....
>
> Interested person" or "person interested in an estate" includes, but is not limited to, the incumbent fiduciary; an heir, devisee, child, spouse, creditor, and beneficiary and any other person that has a property right in or claim against a trust estate or the estate of a decedent, word, or protected individual or a person that has priority for appointment as personal representative and a fiduciary representing an interested person. The Blacks' Law Dictionary defines "interested party as a party who has recognizable state (and therefore standing) in the matter. [Own emphasis]

18. The Applicant being a 'grandson' of the Deceased may only step into the shoes of his late mother as 'a beneficiary' and even then the Applicant must demonstrate that he has legal authority to represent his late mother's estate i.e by holding a Grant of Administration to his late father's estate (the Applicant herein does hold such Grant of Representation).

19. The obvious question that arises is who has the right in priority to apply to administer the estate of a Deceased Person. Section 66 of the *Law of Succession Act* sets out the Order of priority to be applied in issuing letters of Administration to an estate as follows;-

> " When a deceased has died intestate the court shall serve as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall in the best interest of all concerned be made but shall, without prejudice to that discretion, accept as a general guide, the following order of preference:-
>
> a. Surviving spouse or spouses, with or without association of other beneficiaries.
>
> b. Other beneficiaries entitled on intestacy with priority according to their respective beneficial interests as provided by Part V.
>
> c. The Public Trustee; and
>
> d. Creditors.
>
> Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executors who prove the will."

20. From a clear reading Section 66 provides that in cases where a Deceased dies intestate, priority in granting letters of Administration will go to the surviving spouse or spouses and the children of the Deceased.

21. Therefore the Respondent being a biological child of the Deceased is at the 1st degree and ranks in priority over the Applicant who is a grandchild of the Deceased.

22. That is not to say that grandchildren can never inherit from the estate of their grandparents where the child of a deceased person passes away then the grand child of that Deceased may step in and inherit the share of the estate due to their deceased parent.

23. In Re Estate of Wahome Njoki Wakagoto [2913) eKLR it was held:-

> " Under Part V, grandchildren have no right to inherit their grandparents who died 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." [own emphasis]

24. In the case of Cleopa Amutala Namayi v Judith Were Succession Cause 457 of 2005 [2015] eKLR Hon. Mrima, J. observed that;

> " Be that as it may, under Part V of the Act grandchildren have no automatic right to inherit their grandparents.... The argument behind this position is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit from their grandparents indirectly through their own parents..... The children to the grandparents inherit first and thereafter the grandchildren inherit from their parents. The only time where the grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead..... [own emphasis]

25. I therefore find that the Applicant herein cannot claim a right in priority to administer the estate of the Deceased for as long as the biological children of the Deceased are still alive. The Applicant may be named as a 'beneficiary' of the estate of the Deceased to replace his late mother who was a genuine beneficiary. However the Applicant cannot demand to replace his late mother as an Administrator of the estate.

26. I therefore find that the Applicant despite holding a valid Grant of Representation to the estate of his late mother does not qualify to be issued with Grant of Representation in respect of the estate of the Deceased.

27. For the reasons given above I find no merit in this application for substitution. The Summons dated 27th November 2023 is hereby dismissed in its entirety. This being a family matter I make no orders on costs.

DATED IN NYERI THIS 17TH DAY OF MARCH 2025.

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MAUREEN A. ODERO

JUDGE