



Republic v Chief Boisanga One Location & another; Arani (Ex parte Applicant); Arani (Interested Party) (Judicial Review E002 of 2024) [2025] KEHC 11169 (KLR) (24 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11169 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
JUDICIAL REVIEW E002 OF 2024**

**WA OKWANY, J
JULY 24, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

CHIEF BOISANGA ONE LOCATION 1ST RESPONDENT

THE HON. ATTORNEY GENERAL 2ND RESPONDENT

AND

ALICE KERUBO ARANI EX PARTE APPLICANT

AND

HENRY MOKUA ARANI INTERESTED PARTY

RULING

1. The Ex-Parte Applicant herein, Alice Kerubo Arani, instituted the present Application under Order 53 Rule 1 of the *Civil Procedure Rules* and Sections 8 and 9 of the *Law Reform Act*, Cap 26, seeking an Order of Mandamus to compel the 1st Respondent, the Area Chief of Boisanga One Location, to issue her with an introductory letter regarding the estate of Blasio Arani Gori (deceased). She claimed to be the deceased’s second wife and required the letter to obtain limited letters of administration ad litem, in order to participate in the ongoing Succession Cause No. E007 of 2024 in the High Court at Nyamira. She alleged that despite several requests, including one made on 7th July 2024 through her daughter, the Chief refused to issue the letter and instead referred her to the Children’s Office. She further averred that the Chief had been compromised by the deceased’s first family, who were allegedly intermeddling with the estate.
2. In response, the Interested Party, one of the sons of the deceased, filed a replying affidavit dated 20th January 2025, claiming that his father had only one wife, his mother, and that the Applicant was not



a lawful wife or beneficiary. He alleged that the Applicant had no legitimate interest in the deceased's estate and had even disrupted the deceased's burial proceedings before ultimately being excluded. The Applicant filed a further affidavit dated 17th March 2025, asserting that her non-participation in the burial was not by choice, and that the Interested Party was attempting to disinherit her and the second household. She maintained that she was not a stranger to the deceased and was entitled to the introductory letter.

3. The matter was canvassed by way of written submissions.
4. Counsel for the Ex-Parte Applicant argued that an Order of Mandamus compels a public officer to perform a legal duty and cited the cases of *Republic v. Jomo Kenyatta University of Agriculture and Technology Ex Parte Elijah Kamau Mwangi* (2021) eKLR and *Republic v. Town Clerk, Kisumu Municipality Ex Parte East African Engineering Consultants* (2007) 2 EA 441. It was submitted that the 1st Respondent was legally required to issue introductory letters to beneficiaries, and that the Applicant's status as a second wife was undisputed, as shown in the video annexed to the Application in which the Interested Party acknowledged the existence of a second household. Counsel urged the Court to find that the Applicant was entitled to the letter and the reliefs sought.
5. Counsel for the Interested Party, on the other hand, argued that the Application was misconceived, as it pursued a matter of personal interest through Judicial Review instead of through succession or citation proceedings under the *Law of Succession Act*. He submitted that the Applicant had no *locus standi* in the matter, as she was not recognized as a wife of the deceased. He added that the issue had already been litigated and resolved in earlier succession proceedings. Counsel contended that the Applicant was attempting to reopen settled issues and circumvent prior judicial determinations, thereby undermining the administration of justice. He urged the Court to find the Application incurably defective and to dismiss it with costs.
6. I have carefully considered the Application, the affidavits on record, the rival submissions by the parties, and the applicable law. The key issue for determination is whether the Ex-Parte Applicant has made out a case for the grant of an Order of Mandamus against the 1st Respondent.
7. An Order of Mandamus is a public law remedy that issues to compel the performance of a public legal duty that is already owed to an applicant. As correctly cited by Counsel for the Applicant, in *Republic v. Town Clerk, Kisumu Municipality Ex Parte East African Engineering Consultants* (2007) 2 EA 441, it was held that:

“An order of mandamus compels performance of a duty that is purely statutory in nature and where the authority or officer has refused, declined, or neglected to carry out that duty.”

8. In the case of *Republic v. Kenya National Examinations Council Ex-Parte Gathenji & 8 Others* Civil Appeal No 234 of 1996, cited with approval, *Halsbury's Law of England*, 4th Edition, Vol. 7 p. 111 para 89 the Court of Appeal discussed the scope of mandamus, and held thus:-

“The order of mandamus is of most extensive remedial nature and is in form, of a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right and it may issue in cases where although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”



.....These principles mean that an order of mandamus compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”

9. In *Republic v. Principal Secretary, Ministry of Internal Security & another ex parte Schon Noorani & Another* [2018] eKLR Mativo J. (as he then was) explained the parameters to be fulfilled for a party to succeed in an Application for Orders of Mandamus as follows: -

“Mandamus is an equitable remedy that serves to compel a public authority to perform its public legal duty and it is a remedy that controls procedural delays. The test for mandamus is set out in *Apotex Inc. v Canada (Attorney General)*, and, was also discussed in *Dragan v Canada (Minister of Citizenship and Immigration)*. The eight factors that must be present for the writ to issue are: -

- i. There must be a public legal duty to act;
- ii. The duty must be owed to the Applicants;
- iii. There must be a clear right to the performance of that duty, meaning that:
 - a. The Applicants have satisfied all conditions precedent; and
 - b. There must have been:
 - i. A prior demand for performance;
 - ii. A reasonable time to comply with the demand, unless there was outright refusal; and
 - iii. An express refusal, or an implied refusal through unreasonable delay;
 - iv. No other adequate remedy is available to the Applicants;
 - v. The Order sought must be of some practical value or effect;
 - vi. There is no equitable bar to the relief sought;
 - vii. On a balance of convenience, mandamus should lie.”

10. In the instant case, it is not disputed that the 1st Respondent, being the Area Chief, holds a public office and exercises statutory responsibilities under the National Government Coordination Act and other relevant administrative frameworks. One such duty is the issuing introductory letters for purposes of initiating succession proceedings. The Chief’s duty is however not discretionary where a legitimate request is made by a person with a prima facie interest in the estate of a deceased person within his area of jurisdiction. I find guidance in the decision in *In Re Estate Shem Kitanga (Deceased)* [2018] eKLR, where it was held thus: -

“A succession cause starts with an introduction letter from the Chief of the area where the intended petitioner hails from. Though this is not a legal requirement, it is presumed that



the chief is well familiar with the family of a deceased person and can inform the court of the beneficiaries left behind by a deceased.”

11. Similarly, in *Ayako v. Oronje* (Civil Miscellaneous Application 103 of 2023) [2024] KEHC 7641 (KLR) (20 June 2024) (Ruling), Chirchir J. held thus: -

“29. I should point out that the act of issuing a Chief’s letter or that of local Administration in succession proceedings is Administrative, not legal, on the part of the local Administrator.

30. The courts, traditionally, require the chiefs to assist the court to ascertain the immediate kindred of a Deceased person . The Chiefs are considered reliable, as it is expected that he/she is well acquainted with the residents of his location. However, there is no law that binds the chiefs to issue such a letter (s).”

12. Based on the above precedents, it is clear that as a procedural and administrative function, administrative officers being chiefs bear the responsibility of providing introductory letters which courts have adopted as the means by which they obtain information regarding the Estate and the legitimate beneficiaries of a deceased.
13. My finding is that from the evidence on record, particularly the affidavits and annexures including the video marked “AKA002”, there is sufficient indication that the Ex-Parte Applicant may have been in a relationship with the deceased and is not a mere stranger to his household. Whether she was a wife in the strict legal sense is a matter best suited for determination in the succession court, which is, under the *Law of Succession Act*, vested with the jurisdiction of determining questions of dependents and beneficiaries. I find that at this preliminary stage, the threshold is whether the Ex-Parte Applicant has demonstrated a sufficient interest to be issued with an introductory letter to seek letters of administration ad litem, not to conclusively prove marriage.
14. I further find that the 1st Respondent’s refusal to issue the letter without providing a lawful basis, and instead referring the Applicant to the Children’s Office is, in the Court’s view, an abdication of duty. This court holds the view that public officers must act reasonably and lawfully in exercising their administrative powers. There is no provision in law or regulation that mandates the Applicant to obtain such a letter from the Children’s Office in this context.
15. The Interested Party’s contention that the Application is improperly before this Court because it raises personal issues suited for the probate court is misplaced. The Applicant is not seeking a determination of her status as a wife or a share of the estate at this stage, but merely the facilitative action of being issued with an introductory letter, which is a precursor to filing an appropriate application in the probate court. It is not the role of the Chief to adjudicate competing claims of beneficiaries but merely to confirm that the applicant resides or falls within the administrative jurisdiction of his office.
16. My further finding is that the argument that the matter is sub judice is equally unpersuasive. I say so because the Applicant is not attempting to reopen the earlier proceedings on burial or succession but is instead seeking to independently pursue her legal right to be heard in ongoing proceedings, which in my considered view, is a right that cannot be unjustifiably curtailed by administrative inaction.
17. For the reasons reasons that I have stated in this ruling, I find that the Applicant has demonstrated that she is entitled to the order sought. I hasten to add that the 1st Respondent’s refusal to issue the introductory letter was unlawful, unreasonable, and procedurally improper.



Disposition

18. Accordingly, the Court makes the following orders:

- a. An Order of Mandamus is hereby issued compelling the 1st Respondent, the Area Chief of Boisanga One Location, to issue an introductory letter to the Ex-Parte Applicant, Alice Kerubo Arani, for purposes of applying for limited letters of administration ad litem in respect of the estate of Blasio Arani Gori (deceased) within fourteen (14) days from the date of this ruling.
- b. Costs of this Application shall be borne by the 1st Respondent.

19. It is so ordered.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 24TH DAY OF JULY 2025.

W. A. OKWANY

JUDGE

