



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Isaya Omai Arusha (Deceased) (Succession Cause
32 of 2011) [2024] KEHC 3362 (KLR) (13 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 3362 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
SUCCESSION CAUSE 32 OF 2011
JM CHIGITI, J
FEBRUARY 13, 2024
IN THE MATTER OF ESTATE OF ISAYA OMAI ARUSHA (DECEASED)**

BETWEEN

DAVID KAMANDA ARUSHA 1ST PETITIONER

VERONICA NYAMBURA WAMBUGU 2ND PETITIONER

AND

NANCY BANCHIRI ARUSHA 1ST OBJECTOR

LUCIA KEMUNTO ONCHIRI 2ND OBJECTOR

RULING

1. What is before this court is the Summons for Confirmation of Grant Application dated 25th March, 2022 filed by the Administrators Luciah Kemunto Onchiri And Daniel Kamanda Arusha seeking for Orders that:
 - a. That, the Grant of Letter of Administration intestate made to the Luciah Kemunto Onchiri And Daniel Kamanda Arusha in this matter on 29th June, 2021 be confirmed.
 - b. That costs of this application be in the cause.
2. The same is supported by the affidavit sworn by the Administrators. There is a Consent to Confirmation of Grant and Consent to the Mode of Distribution by all the three beneficiaries namely Luciah Kemunto Onchiri, Daniel Kamanda Arusha And Boniface Omai Arusha.
3. The Summons application is opposed by Veronica Nyambura Wambugu.
4. On the 29th June, 2021 Hon. Judge R.E. Ougo delivered a ruling in this case and determined that Veronica Nyambura Wambugu is a stranger in this proceedings as she failed to tender any evidence to be the deceased's child.



5. Veronica Nyambura Wambugu opposes the application on the grounds she has filed A Notice of Appeal in respect of the Ruling delivered herein on the 29th June, 2021.
6. The same is opposed by the 2nd Administrator/Petitioner herein who filed a replying affidavit in this court on 7th June 2022.
7. The opposition is predicated on the argument that she had filed a notice of appeal challenging the order of Justice Ougo.
8. According to her, from the schedule it is clear that the estate of the deceased comprises of both movable and immovable properties and that in the event this application is allowed especially the movable properties which comprise of Kenatico Taxis Limited Benefits, and Kenya Power And Lighting Shares And Benefits if paid out to the proposed beneficiaries the possibility of the objector in this matter accessing them in the event of appeal succeeding is remote and which obviously will defeat the whole purport and intents of the appeal; and further than that the objector stands to suffer irreparable loss and damages.
9. Her prayer, in the interest of justice, she be granted a time limit within which to file her appeal and failing which then the applicants here would be at liberty to have the estate distributed as proposed.
10. Since July 2021 when Veronica Nyambura Wanbugu Filed A Notice Of Appeal in respect of the Ruling of the 29th July, 2021, no effort or steps have been taken toward the disposal of the appeal.
11. The filing of a Notice of Appeal cannot stay further proceeding herein in the absence of an express Court Order directing stay of further proceedings and I so hold.
12. The Respondent has not furnished this court with any justification as to why the grant should not be confirmed and I so hold.
13. The court had the occasion of reading the ruling of Justice Ougo and the beneficiaries were in court on 12th December, 2023 and the court was satisfied with their identities and their consents.
14. I have considered the application, the annexed Consent to Confirmation of Grant and Consent to The Mode of Distribution by all the three beneficiaries namely Luciah Kemunto Onchiri, Daniel Kamanda Arusha And Boniface Omai Arusha and I am satisfied that the grant letters of administration should be confirmed which I hereby do.

Order:

15.
 1. The Application dated 25th March, 2022 is allowed.
 2. Veronica Nyambura Wambugu has the liberty to pursue the appeal.
 3. Each party shall bear its costs.

DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 13TH DAY OF FEBRUARY, 2024

J. CHIGITI (SC)

JUDGE

