



REPUBLIC OF KENYA



In re Estate of the Peter Kago Mukuha (Deceased) (Succession Cause 92 of 2011) [2024] KEHC 2511 (KLR) (11 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2511 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 92 OF 2011
HM NYAGA, J
MARCH 11, 2024**

IN THE MATTER OF THE ESTATE OF THE PETER KAGO MUKUHA (DECEASED)

RULING

1. On 28th February 2024, I delivered a ruling in respect to two applications namely;
 - a. Summons for Revocation of Grant dated 4th August 2022, by Newton Kagira Mukuha.
 - b. Summons for Revocation of a Grant dated 16th November 2023 by Grace Wambui Mukuha.
2. As I had stated in the said Ruling there was a pending Application dated 22nd January 2024 filed by David Kimani Mukuha. It seeks the following orders;
 - a. Spent
 - b. That the grant of Letters of Administration that was made to Simon Gashwe Mukuha, on the 5th day of October 2016 be revoked or annulled on the ground that the grant has become useless and inoperative in view of the administrator's demise.
 - c. That David Kimani Mukuha be appointed as an administrator in place of the late Simon Gashwe Mukuha who passed away on 26th August 2023.
3. The Application is propped by the grounds set out on the face of it and the Supporting Affidavit of the Applicant.
4. In a nutshell, the Applicant states he is a brother to the late Simon Gashwe Mukuha who was the legal administrator of the estate herein. That the said Simon Gashwe Mukuha died but before his demise, he had completed the administration and distribution of the estate in its entirety, with the consent of all the beneficiaries herein. That in the event that the court finds that an administrator to the estate is necessary, then he be appointed as such. He states that he has the consent of the other beneficiaries to make the application.
5. During the directions on the said Application, there was really no opposition to the Application given the directions I had given earlier.



6. As I had stated earlier the Applicant would also be subjected to the same process I did for the other Applicants that I dealt with.
7. Surprisingly it is very apparent that it is the Applicant who wants to stand in the way of the directions that I gave. Through his advocate he seemed to object to the grant being issued to Grace Wambui Mukuha as co-administrator. His reasoning is that he has the consent of the other beneficiaries to become the sole administrator.
8. One thing I fail to understand is why the Applicant thinks that he is the only one who can become the sole administrator of the estate. It is not lost on the court that he had even raised an objection to any issuance of any grant herein on the ground that the estate had been distributed in its entirety.
9. Also I note that the consent he relies upon is purportedly signed by Grace Wambui Mukuha, who has also applied to become an administrator.
10. Counsel for the Applicant asked me to rely on rule 26 of the *Probate and Administration Rules* in deciding the matter. The rule requires that an Applicant obtains the consent of ALL persons entitled in equality or priority. Clearly the Applicant has not obtained the consent of all the beneficiaries herein. Even if it is just one beneficiary who has not consented, then we cannot talk of the consent of all beneficiaries as envisaged by the *Act*. There will be need to issue a citation to the beneficiary who has not given his consent, then determine the issue. I see no need to take this route.
11. As I have observed already, the family is split into two factions with the majority being, apparently, on the Applicant's side. That, however, does not give him a higher right than any other Applicant.
12. In addition, the history of the matter requires that there be checks and balances on any administrator. The interests of the beneficiaries in the other 'faction' must also be catered for.
13. In the circumstances, and further to my previous directions, I order that the grant issued to Simon Gashwe Mukuha be revoked and a grant de bonis non to issue to David Kimani Mukuha And Grace Wambui Mukuha.
14. The two administrators shall proceed, if not done so already, to complete the administration of the estate and undertake all other attendant duties.
15. The parties are reminded that they should respect the wishes of their father, who by his sheer enterprise, has placed all of them, as beneficiaries, in a very privileged position that a majority of Kenyans can only dream about.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 11TH DAY OF MARCH, 2024.

H. M. NYAGA,

JUDGE.

In the presence of;

C/A Oleperon

Mr. Muchoki for Newton Kagira

Mr. Moindi for Grace Wambui

Ms Kinyua for David Mukuha

