



REPUBLIC OF KENYA



In re Estate of Patrick Wahome Kamangu (Deceased) (Succession Cause E333 of 2021) [2024] KEHC 3728 (KLR) (Family) (19 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3728 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E333 OF 2021
MA ODERO, J
APRIL 19, 2024
IN THE MATTER OF THE ESTATE OF PATRICK WAHOME KAMANGU (DECEASED)**

RULING

1. Before this court for determination are two applications as follows:-
 - I. Summons for Revocation or Annulment of Grant *Ad Litem* dated 7th December, 2021 filed by the Applicants Roy Kamangu Wahome and Nicodemus Kamangu Wahome in which they sought the following orders:-
 - a. “That the Grant *Ad Litem* issued to Jane Wanjira Karinge on the 19th day of March, 2021 be revoked (Annulled).
 - b. That costs of the summons be provided for”
2. The summons was supported by the Affidavit of even date sworn by the 1st Applicant.
3. The Respondent Jane Wanjira Karinge opposed the application through the Replying Affidavit dated 23rd March, 2022.
 - II. Application dated 14th October, 2022 filed by the Applicants seeking for orders that:-
 - “(i) The Applicant in the application dated 7th December, 2021 namely Nicodemus Kamangu Wahome be substituted with Paul Kimathi Kamangu.
 - (ii) The costs of their summons be paid out of the estate.”
4. The application was supported by the Affidavit of even date sworn by the 1st Applicant.
5. The second application was not opposed. I will now proceed to consider each application individually.



(a) Application dated 14th October, 2022

6. In this application it is sought to have one of the Applicants namely Nicodemus Kamangu Wahome substituted. It is averred that the said 'Nicodemus' passed away on 16th January, 2022 after the commencement of these proceedings. That in the circumstances it is imperative that he be substituted with Paul Kimathi Kamangu, who is also a beneficiary of the estate of the Deceased.
7. As stated earlier this application was not opposed. I therefore allow the same in terms of prayers (1) and makes no orders on costs.

(b) Summons dated 7th December 2021

8. This succession cause relates to the estate of the late Patrick Wahome Kamangu (hereinafter 'the Deceased') who died on 7th December, 2020.
9. Following the demise of the Deceased the Respondent Jane Wanjira Karinge who described herself as a "wife" to the Deceased petitioned the court for a Grant of letters of Administration *Ad Litem* to enable her represent the estate of the Deceased in Nairobi CMCC Number E458 of 2020 *Patrick Wahome Kamangu v Charles Kamau Wangubu*.
10. The High Court did on 19th March, 2021 issue to the Respondent a Grant *Ad Litem*
11. The Applicants now pray to have the said Grant *Ad Litem* revoked on grounds that the Respondent failed to inform them of her Petition. That the said Grant *Ad Litem* was obtained fraudulently by failure to disclose material facts i.e the existence of the other beneficiaries to the estate.
12. The Applicants further allege that the Respondent was never married to the Deceased and is not his widow and therefore has no locus standi in this matter.
13. On her part the Respondent asserts that she got married to the Deceased under Kikuyu Customary Law following the divorce of the Deceased from his first wife Anne Wambui (now deceased). That as such she is a widow to the Deceased. The Respondent readily concedes that the 1st Applicant Roy Kamangu is the eldest son of the Deceased and is even recognized as a beneficiary in the chief's letter.
14. The Respondent further states that when the deceased died the 1st Applicant was still a minor and had no communication with the family of the Deceased. That she only applied for the Grant *Ad Litem* in order to protect the interests of the estate in the suit before the Chief Magistrates Court. The Respondent asserts that she is ready and willing to petition the court for a full Grant together with the 1st Applicant.

Analysis and Determination

15. The Applicants insist that the Respondent has no locus standi in this matter as she was not a wife to the Deceased. The term locus standi is a latin term which internally means "place of standing" and refers to the right of an individual to appear in a particular suit.
16. Section 29 of the [Law of Succession Act](#) defines dependants as follows:-
 - a. The wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death.
 - b. Such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and



half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and

- c. Where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death. [Own emphasis]
17. The key question then is whether the Respondent is a beneficiary to the estate of the Deceased.
 18. The Applicants insist that the Deceased had no legal capacity to marry the Respondents given that he had contracted a legal (statutory) marriage with their late mother Anne Wambui. Annexed as proof of the marriage is a copy of Marriage certificate serial number 827271 (Annexure 'RKW 4a')
 19. The Respondent whilst conceding that the Deceased was married to the said Anne Wambui asserts marriage between that, the Deceased and the said Anne Wambui was dissolved legally vide the Decree Nisi dated 30th April 2010 and the Decree Absolute dated 8th April 2011 issued in Divorce Cause Number 244 of 2008.
 20. The Respondent therefore insists that the Deceased did have the legal capacity to marry her.
 21. The question of whether or not the Deceased and the Respondent got married under customary law cannot be determined by way of Affidavit evidence. This would require a full hearing at which evidence is called.
 22. Suffice to say there is prima facie evidence that the Deceased and first wife Anne Wambui were divorced. Secondly the chief's letter dated 9th February, 2021 names both the 1st Applicant and the Respondent as the survivors of the Deceased.
 23. It must be remembered that what was issued to the Respondent was a Grant *Ad Litem* which is limited in scope. It only allows her to represent the estate in the suit before the chief Magistrate Court. The Respondent has no authority to take over and/or distribute the estate.
 24. The Applicants allege that the Respondents obtained the Grant *Ad Litem* fraudulently by failing to include them yet I note that the Respondents did file in court the chief's letter naming the 1st Respondent as a beneficiary. There is no evidence to show that she made any attempts to reach out to the Applicants when applying for the Grant. If the Respondent felt that the Applicants were non-communicative and/or non co-operative then the Applicant should have issued a citation, to inform them of her intention to petition for a Grant.
 25. In the circumstances I find that the Respondent did move to petition for the Grant *Ad Litem* without involving all the beneficiaries to the estate. The Grant so obtained is therefore for revocation.
 26. Finally I do find merit in this application for revocation of Grant and accordingly I make the following orders:-
 - i. The Limited Grant *Ad Litem* issued to Jane Wanjira Karinge on 19th March, 2021 be and is hereby revoked.
 - ii. A fresh Grant of letters of Administration *Ad Litem* to issue jointly to Jane Wanjira Karinge and Roy Kamangu Wahome. ONLY for purposes of defending the interest of the Estate in the suit before the Chief Magistrate Court.
 - iii. The family to agree on a person/persons to file a petition for a full Grant within six (6) months.
 - iv. Each party to bear their own costs for this application.

DATED IN NYERI THIS 19TH DAY OF APRIL, 2024.



MAUREEN A. ODERO

JUDGE

