



REPUBLIC OF KENYA



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**In re Estate of Muriithi Gakuo (Deceased) (Succession Cause
E142 of 2023) [2024] KEHC 3315 (KLR) (9 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3315 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE E142 OF 2023**

SM MOHOCHI, J

APRIL 9, 2024

IN THE MATTER OF THE ESTATE OF MURIITHI GAKUO (DECEASED)

BETWEEN

LILIAN WANJIRU MURIITHI APPLICANT

AND

JOSEPH GAKUO MURIITHI RESPONDENT

RULING

1. The Applicant herein Lilian Wanjiru Muriithi moved this Court by way of a Citation dated 9th August, 2023 requiring the Respondent to demonstrate why Letters of Administration with Will annexed in respect of the estate of Muriithi Gakuo should not be granted to the Applicant.
2. In her Supporting Affidavit sworn on 9th August, 2023, the Applicant deponed that the deceased died on 4th October, 2000 as per the attached death certificate dated 17th October, 2000. She further stated that the deceased died testate as per the annexed will dated 22nd October, 1991 and in the will the deceased named Hellen Thongori Muriithi, the Applicant's mother, as the sole executor who thereafter passed on without taking out probate.
3. That the Respondent together with some beneficiaries entered into an agreement dated 18th October, 2000 and allocated themselves the entire estate. She added that the Respondent has refused to take Letters of Administration with Will annexed now that the sole executor is deceased for the siblings to get their rightful share.
4. In opposition, one James Kihara Muriithi filed a Replying Affidavit sworn on 16th October, 2023 where he deponed that he is the surviving Administrator/Executor of the estate of the deceased. He added that he had authority to swear the affidavit on behalf of the Respondent. That there exists Nakuru HC Succ Cause No. 462 of 2001 and that the Application was an abuse of the Court process shrouded



by ulterior motives against the Respondent who resides in the United States. That the estate has many children but the Applicant singled out the Respondent.

5. That there are two houses that were to benefit from the estate and the 1st House of Grace Nyambura Muriithi is settled and since Hellen Thogori Muriithii is deceased there has not been a representative appointed by her house to replace to finalize the administration of the estate and that was the only remaining bit to finalize the process. That the Citation should be dismissed with costs to the Respondent
6. The matter proceeded orally on 25th January, 2024

Citor's Case

7. Through counsel it was stated that the Applicant seeks to compel her older brother to commence the succession process. That the deceased had 2 wives and the 1st wife died in his lifetime and upon his demise the estate was with the 2nd wife who also passed on. That, Joseph Gakuo is the only son and has all the documents.
8. That after the instant Application was filed the Citee filed a response and they found out that there was a succession cause in Nakuru High Court Succ. No. 462 of 2001 and they also learnt that there was an administrator appointed together with their mother claiming 1st House has settled in their portion and 2nd House is yet to settle.

Citee's Case

9. The Citee opposed the Application and that it was an abuse of the process of law. That it is trite law that citation is done where there is an intestate case where there is refusal to take out letters of administration. That two parties applied for letters of administration in Succession No. 462 of 2001 and a Grant was issued. That before final distribution the mother to the Citor passed on.
10. He posed a question as to why the Citee singled out the Respondent yet there are many children. The 2nd House's brothers and sisters are yet to agree. That the Respondent has lived in the states for ages and the Court is being asked to conduct an illegality and it is not to appoint a substitute. Reliance was placed in the following authorities the *Estate of Juma Yusuf* (2019) eKLR, the *Estate of Josiah Muli Wambua* (2014) eKLR and the *Estate of Pricilla Malel* (2021) eKLR that discuss circumstances for issuance of Citation and prayed for the Citation to be dismissed together with costs.
11. On rejoinder it was stated that, Succession was conducted in the year 2001 which was 23 years ago. The Administrator never concluded the distribution and went to sleep for 23 years. That the administrator has not done anything to conclude by distributing the estate to the beneficiaries. That the Citee was not aware of the succession and came to be aware in the instant. That there was no personal vendetta and that the Citee has been compromised. That the Oxygen Principles should address any concerns raised. That the Application be allowed.

Analysis and Determination

12. Having considered the Citation, the Affidavits thereto and the averments of the parties' counsel, there is no dispute that the deceased died on 4th October, 2000 and according to the Chief's letter annexed as "LWM1" dated 10th May, 2005, the deceased was survived by

1st House:

1. Grace Nyambura Muriithi - Wife (Deceased)



2. Joseph Gakuo Muriithi - Son
3. James Kihara Muriithi - Son
4. Josephat Wachira Muriithi - Son
5. Ann Wanjiru Muriithi - Daughter
6. Wairimu Muriithi - Daughter
7. Watetu Muriithi - Daughter
8. Mary Wahinga Muriithi - Daughter
9. Warukira Muriithi - Daughter

2nd House:

1. Hellen Thogori Muriithi - Wife (Deceased)
2. Esther Wangechi Muriithi - Daughter
3. Joseph Gakuo Muriithi - Son
4. Jane Watetu Muriithi - Daughter
5. Ann Wairimu Muriithi - Daughter
6. Margaret Wambui Muriithi - Daughter
7. Grace Nokabi Muriithi - Daughter
8. Lilian Wanjiru Muriithi - Daughter

13. The list of beneficiaries was also not disputed. According to the Applicant, the deceased died testate and she annexed the Will dated 22nd October 1991. She alleges that the succession process has not commenced and that the Respondent together with her brothers entered into an agreement dated 18th October, 2000 and distributed the estate to themselves to the exclusion of all other beneficiaries. On the other hand, James Kihara Muriithi in his affidavit annexed a copy of the Letters of Administration intestate of the deceased issued on 16th April, 2004 to Hellen Thogori Muriithi and James Kihara Muriithi issued in Nakuru HC Succ. Cause No. 462 of 2001.
14. The fact that there exists a testate probate and administration Nakuru HC Succ. Cause No. 462 of 2001 with regards to the deceased would render the citation proceedings moot and that it remained unexplained as to why the citor appears unaware of the same almost 12 years since the filing.
15. This Court equally notes the sentiment by the Executor, that the 1st House is well settled and that the 2nd House is yet to appoint a representative to replaced Hellen Thongori-Deceased to finalized the Administration.
16. This Court finds this citation to be without merit for the very reason that a probate and administration relating to the deceased exists.
17. The Citor is urged to canvass her grievances in Nakuru HC Succ Cause No. 462 of 2001.
18. The Citation dated 9th August, 2023 is accordingly without merit and the same is dismissed.
19. This Court shall however not award any costs as the parties herein are all family members.



Orders accordingly.

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 9TH DAY OF APRIL 2024.

MOHOCHI S. M.

JUDGE

