



In re Estate of Sybellah Wanjiku Gitiha (Deceased) (Succession Cause E185 of 2023) [2024] KEHC 7117 (KLR) (19 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7117 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE E185 OF 2023**

PN GICHOHI, J

JUNE 19, 2024

**IN THE MATTER OF THE ESTATE OF THE LATE
SYBELLAH WANJIKU GITIHA (DECEASED)**

BETWEEN

LOISE WAMBUI KAHENYA APPLICANT

AND

JOSHUA GITIHA NGANGA RESPONDENT

RULING

1. By certificate of urgency the Petitioner/applicant filed this Petition dated December 17, 2023 under Section 54 Rule 14 of the Fifth Schedule of the Law of Succession Act seeking nomination of, and grant letters Administration *Ad Litem* to Joshua Gitih Nganga as the legal representative of the estate of the late Sybellah Wanjiku Gitih who died on May 20, 2023 for purposes of substitution of the deceased in a pending case at Environment and Land Court being Nakuru ELC No. 85 2014 consolidated with Nakuru ELC No. 160 of 2012, without power of distribution of the estate of the deceased.
2. She states that she is a sister to the deceased and the registered owner of Nakuru / Bahati/Settlement Scheme /217 which the deceased (Sybellah Wanjiku Gitih) illegally occupied through her authorised servants and agents, which occupation through the said servants and agents persists.
3. Further, she states that she is the Plaintiff and the Deceased is the 2nd Defendant in the two cases above where she (Plaintiff) is seeking vacant possessions of the said parcel of land or orders of eviction therefrom and which orders cannot be issued unless the end Defendant (now Deceased) is substituted with a legal representative.
4. She states that the Respondent is the surviving widower and under obligation to take out letters of administration or even *Ad Litem* in respect of the of the Estate of Sybellah Wanjiku Githa but has not done it to date and is reluctant to do it.



5. She has filed an Affidavit in support and attached the death certificate of the deceased. She deposes that the said consolidated cases are still pending in Court substitution of the 2nd Defendant (deceased).

Determination

6. This Court has considered the Petition, affidavit in support and annexures thereto. Section 54 of the Law of Succession Cap 160 Laws of Kenya provides that:-

“A court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act.”

7. Though served, there has been no response by the Respondent and he has not attended Court. The petition is therefore un-opposed. In those circumstances, Rule 14 of the Fifth Schedule provides that:-

“When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution.”

8. This Court has considered the delay caused in the cases filed in the Environment and Land Court where the deceased was a Defendant but now deceased. The deceased was a sister to the Petitioner and therefore related to the Respondent by marriage. There is no justification whatsoever for further delay simply because the Respondent herein, being the widower, has become uncooperative and/or unwilling to pursue succession proceedings in regard to the estate of his late wife.

9. Justice now demands that this Court allows the petition and make the following orders:-

1. Joshua Gitiha Nganga be and is hereby nominated as a legal representative of Sybellah Wanjiku Gitiha (deceased) for purposes of representing the deceased in Environment and Land Court being Nakuru ELC No. 85 of 2014 consolidated with Nakuru ELC No. 160 of 2012.
2. A Grant of letters of Administration *Ad Litem* is issued to him for that purpose only.
3. For avoidance of doubt, the said Grant does not grant him (Joshua Gitiha Nganga) power of distribution of the estate of the deceased.
4. There are no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 19TH DAY OF JUNE, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

Ms Mungai for Mr. Orege for Petitioner

N/A for Respondent

Ruto- Court Assistant

