



REPUBLIC OF KENYA



**In re Estate of Walter Elijah Mwita (Succession Cause 147 of 2011)
[2024] KEHC 11813 (KLR) (Family) (19 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 11813 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

SUCCESSION CAUSE 147 OF 2011

PM NYAUNDI, J

JULY 19, 2024

IN THE MATTER OF THE ESTATE OF WALTER ELIJAH MWITA

RULING

Background

1. The deceased herein, Walter Elijah Mwita died on 1st January 2010. Following his death Mary Mkanyika Mwita (now deceased) petitioned for and was granted Grant of Probate of Will on the 15th July 2011. The Grant was with respect to the Will of the deceased dated 22nd September 2008. The will appointed Mary Mkanyika Mwita as Executor.
2. Vide Application dated 27th February 2020 presented under Sections 17, 18, 19, 20, 48 and 76 of the *Law of Succession Act* and Rules 44, 58,63 and 73 of the Probate and Administration rules, Anastacia Nchagwa Mwita sought to revoke the grant issued to Mary Mkanyika Mwita. She contended that the will was not valid as it excluded other beneficiaries of the deceased, his 2 wives and their children.
3. At some point the Executrix, Administrator died, prompting her daughter Elenour Matinde Mwita to present application dated 3rd November 2022 under Sections 3 and 3A of the *Civil Procedure Act*, Section 47 of the *Law of Succession Act* in which application she sought conservatory orders in respect of the estate against 6 Respondents; namely VF
4. Interestingly she sought leave to present the Application notwithstanding that ‘she had not obtained a Limited Grant for the Estate of the late Mary Mkanyi Mwita, the Executrix of the will now deceased’.
5. On 22nd November 2022 (as amended on 2nd February 2023), Josephine Wegesa Mwita presented Summons under Sections 76 of the Law of the Succession Act and Rule 44 of the Probate and Administration Rules seeking injunctive orders against Elenour Matinde Mwita and ANgela Bali Mwita, that the respondents file accounts and that the grant issued on 15th July 2011 be revoked. The Applicant contests the validity of the will that is the basis of the grant.



6. On 25th January 2011, the Court revoked the grant issued on 15th July 2011 and directed that the Application dated 22nd November 2022 (as amended) be heard by way of viva voce evidence and parties file witness statements and list of documents within 30 days. On 24th July 2023, the Court directed that parties dispense with Application dated 3rd January 2022 before proceeding with the hearing of the Application dated 27th February 2020.
7. All parties have complied and filed written submissions.

Analysis and Determination

8. The Application for determination is the Application dated 3rd January 2022. The Application as stated earlier is said to be presented under Sections 3 and 3A of the [Civil Procedure Act](#), Section 47 of the [Law of Succession Act](#).
9. Essentially the Applicant is seeking injunctive orders against the respondents absent letters of administration. In [Edema & 2 others v Edema & 5 others \(Miscellaneous Succession Cause E001 of 2022\)](#) [2022] KEHC 9960 (KLR) (6 July 2022) (Ruling) the Applicant sought orders against the Respondents for intermeddling. As in the instant case the Applicants in that case presented the Application in the absence of Letters of Administration.
8. On locus standi, the Court cited with approval the decision in Alfred Njau v City Council of Nairobi (1983) KLR 625 where the Court of Appeal stated-locus standi literally means a place of standing and refers to the right to appear or heard[sic] in court proceedings and to say that a person has no locus standi means that he/she has no right to appear or be heard in such and such proceedings.
9. The Court further referred to the decision of Dulu J. in the matter of the Estate of Geoffrey Meitamei Lonina (Deceased) [2012] eKLR where the Court stated Indeed, under Section 45(1) and (2) of the [Law of Succession Act](#) (Cap 160) this Court has powers to protect the assets of a deceased person. However, in my view only an administrator or an interested party in an existing administration cause, can apply for protection of the deceased's assets. In the present matter, no application for letters of administration has been filed under Sections 51, 53 or 54 of the [Law of Succession Act](#). Therefore, in my view, the provisions of Section 45 of the Act cannot be brought into play by the applicant. She has no legal standing in law to bring the present application. On that account, I find that the application is misconceived.
10. More recently in the case of in re Estate of James George Maruti (Deceased) [2021] eKLR Riechi J summarized it as follows-

The applicant may be having a cause of action or interest as a beneficiary to protect and preserve the estate or intermeddling and waste. She however has lacked locus standi to secure the relief sought. Without first obtaining either limited or full grant of letters of administration.
11. In Conclusion I find that it is well established by law and judicial precedent that for a party to move to preserve the estate they need to be clothed with the requisite mandate, in this instance letters of administration. The orders sought are also not issuable against the Respondents as they have not taken out letters of administration with respect to the estate.
12. Having found that the Applicant has no locus standi, I am unable to proceed and consider the merits of the Application.



13. For the foregoing reasons, the Application dated 3rd November 2022 is struck out. Owing to the relationship between the parties and the nature of the Application there shall be no order as to costs.
14. The Court has already revoked the grant, which disposes of one limb of the Applications dated 22nd November 2022 and 27th February 2020. The outstanding issues now are who should administer the Estate of the deceased and who are the rightful beneficiaries.
15. This can be determined by hearing both the Applications contemporaneously by way of viva voce evidence on November 20, 2024 at noon in open Court

It is so ordered

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 19TH DAY OF JULY, 2024.

P. NYAUNDI

JUDGE

In presence of: -

Fardosa Court Assistant

Mwangi JI

