



**In re Estate of Kangethe Ngoriongo alias John Kangethe Ngoriongo (Deceased) (Probate & Administration E004 of 2023) [2024] KEHC 8092 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8092 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
PROBATE & ADMINISTRATION E004 OF 2023  
FN MUCHEMI, J**

**JULY 4, 2024**

**N THE MATTER OF THE ESTATE OF KANGETHE NGORIONGO  
ALIAS JOHN KANGETHE NGORIONGO (DECEASED)**

**BETWEEN**

**STEPHEN MWANIKI MWANGI (SUING AS THE LEGAL REPRESENTATIVE  
OF THE ESTATE OF MWANGI NGORIONGO - DECEASED) ..... CITOR**

**AND**

**CECILIA WANJIRU ..... 1<sup>ST</sup> CITEE  
MARGARET NJOKI ..... 2<sup>ND</sup> CITEE  
AGNES WAMBUI ..... 3<sup>RD</sup> CITEE  
DANIEL MWANGI ..... 4<sup>TH</sup> CITEE  
JAMES NG'ANG'A ..... 5<sup>TH</sup> CITEE**

**RULING**

**Brief facts**

1. By a citation dated 12<sup>th</sup> September 2023, the citor cited the five (5) respondents seeking for orders that they do show cause why they should not petition for a grant of representation in respect of the estate of their late father who died intestate on 5<sup>th</sup> September 2020 leaving behind the citees as his survivors.
2. The 4<sup>th</sup> cite opposed the citation and filed a Response to Citation dated 6<sup>th</sup> May 2024.

**The Citor's Case**

3. The citor states the deceased died on 5<sup>th</sup> September 2020 intestate leaving the five respondents named in this citation surviving him and that there is no other person entitled by virtue of enactment in priority



to the said citees to share with him his estate. The citor further states that the citees have not taken out the letters of administration of the estate of the deceased.

4. The citor avers that he is the legal representative of the estate his father, Mwangi Ngoriongo who was a brother to the deceased. The said Mwangi Ngoriongo died on 19<sup>th</sup> August 2017 and was a creditor of the estate of the deceased.
5. The citor further states that his father was at all times in occupation and had been utilizing LR No. LOC 1 KIUNYU/KIAWAIHIGA Plot T7 which was acknowledged as part of his estate and been utilized by his dependants even after his death to date. However, the citor contends that the suit property is still registered and was held in trust under the name of the deceased Kangethe Ngoriongo alias John Kangethe Ngoriongo. It is further deposed that the survivors of the deceased have failed to take out a grant to enable a transfer of the said parcel to the estate of the citor and the other dependents of his deceased father.

#### **The 4<sup>th</sup> Citee's Case**

6. The 4<sup>th</sup> citee states that the deceased is his father whereas the citor is his cousin. According to the 4<sup>th</sup> cite, the citor is not a dependent of the deceased by virtue of Section 29 of the [Law of Succession Act](#). Neither is the citor entitled to transmission of any property from the estate of the deceased.
7. The 4<sup>th</sup> citee states that there is no property his deceased father was holding in trust and no evidence has been presented before the court to that effect. The 4<sup>th</sup> citee further states that he is not aware of any petition for letters of administration at Murang'a Law Courts and if at all it exists, the citor ought to have registered his interest in that cause. The 4<sup>th</sup> cite says he does not understand why the current citation was filed at Thika Law Courts instead of Muranga where the deceased lived and where L.R. LOC 1 KIUNYU/KIAWAIHIGA Plot 17 is situated. It is argued that this court has no jurisdiction to hear and determine the citation.
8. The 4<sup>th</sup> citee states that it is not true that the citor is a creditor of the estate of the deceased. Furthermore, even assuming that the citor is a creditor, the 4<sup>th</sup> cite ranks above him in priority because he is a child of the deceased. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> citees are also children of the deceased. It is further argued that the citation is premature and misconceived since the citees have not refused or neglected to file a succession cause.
9. The 4<sup>th</sup> citee further avers that Rule 22 is clear as to who is entitled to file a citation, which is not the case with the citor. Further, a creditor would fall in line after all the other beneficiaries of the deceased and the Public Trustee have all failed to take out a grant.
10. The 4<sup>th</sup> cite argues that their deceased father was in possession of the suit property where he had planted nappier grass and animal fodder. During his lifetime, the deceased would allow the applicant's father's youngest wife Josephine Wangui Mwangi use the suit property, but she handed back the land to the deceased in the year 2017 after the citor's father died. It is further stated that the deceased continued farming on the land until he died in the year 2020. During the deceased's lifetime, the 4<sup>th</sup> citee says that there was no dispute over the ownership of the property, until 2022 when the applicant took them to court after the deceased died. The 4<sup>th</sup> citee further argues that there is no evidence provided that the property was held in trust for anyone by the deceased. It is not in dispute that the deceased is the registered owner.
11. Directions were issued that the citation be canvassed by way of written submissions and from the record only the applicant complied on 31<sup>st</sup> May 2024. The 4<sup>th</sup> citee on the other hand had not filed his submissions by the time of preparing this ruling.



## The Citor's Submissions

12. The citor submits that although the 4<sup>th</sup> citee averred that they have filed a petition for letters of administration and attached a draft copy as proof, there is no proof of any petition filed in any court.
13. The citor relies on Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules and submits that the court has jurisdiction to cause an appearance to be entered for the citees to either accept or refuse letters of administration. Further the citor argues that the 4<sup>th</sup> citee is not keen on taking out letters of administration despite being the only one of the citees laying claim to the property. Additionally, the citor submits that the 4<sup>th</sup> citee's response does not show any objection or reasonable cause why the citation should not be allowed in the manner sought.
14. The citor relies on Part VI of the Probate and Administration Rules and the case of Josiah Muli Wambua (Deceased) Nairobi, Succession Cause No. 2557 of 2012 [2014] eKLR and submits that should the persons cited refuse or fail to appear upon being cited or to apply for the grant, the citor may proceed to petition the court for the grant.

## The Law

15. It is not disputed that the deceased herein died on 5<sup>th</sup> September 2020 and was the registered proprietor of LR. No. Loc 1 Kiunyu/kiawaihiga/plot T7. The citor has approached this court in his capacity as a creditor which is heavily contested by the 4<sup>th</sup> citee. According to the 4<sup>th</sup> citee, the deceased is the registered proprietor of the suit property and he never held it in trust for his brothers. As such, it is evident that the citor is not a dependant for the purposes of Section 29 of the Law of Succession Act. In any event, even if the citor was a creditor of the estate, he is not ranked in parity with the 4<sup>th</sup> citee or with any of the surviving children of the deceased. Section 66 of the Law of Succession Act provides that:-

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

  - a. The surviving spouse or spouses, with or without association of other beneficiaries;
  - b. Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
  - c. The Public Trustee; and
  - d. Creditors.
16. According to Part V of the Act, which sets out the order of priority in entitlement to a share in the estate of the deceased, priority is given to the surviving spouse, followed by the children of the deceased, then the parents of the deceased in the event that the deceased was not survived by a spouse or children, other relatives follow thereafter.
17. Rule 22 of the Probate & Administration Rules is clear as to who is entitled to file a citation; that person must be of equal or the next in priority to the person cited. A creditor would therefore only fall



in line after all the other beneficiaries of the deceased and the Public Trustee have failed to take out a grant. In *Josiah Muli Wambua* [2014] eKLR the learned Judge held:-

In intestacy, citations issue only in cases where no petition has been lodged in court. Citations are intended to trigger the process of applying for letters of administration intestate in circumstances where the persons entitled to apply are not willing or are slow in moving the court in that behalf. The citor should not be a person who has himself already applied for the grant, for the citor should only apply for grant after the citee fails to so apply.

18. It is not disputed that the citees are the children of the deceased and are therefore the beneficiaries of the deceased's estate. Thus, to the extent that the citor is neither a beneficiary of the deceased nor the next in line in terms of the order of priority under Section 66 of the *Law of Succession Act*, this citation is untenable. However, the citor is claiming interest in one of the assets of the deceased which can only be decided in a succession court. It is noted that the 4<sup>th</sup> citee has responded to the citation and has demonstrated to the court that he is ready and willing to petition for letters of administration intestate as a child of the deceased. The 4<sup>th</sup> citee has annexed a draft copy of petition for letters of administration and a letter from the chief dated 22<sup>nd</sup> August 2022 to show that he has begun the process of succession proceedings for the estate of the deceased.
19. In my considered view that, the citation dated 12<sup>th</sup> September 2023 has no merit and is hereby disallowed.
20. In the event that the 4<sup>th</sup> cite fails to file the succession proceedings within 30 days, the citor shall be at liberty to do so.
21. The parties here are relatives and as such, I direct that there shall be no order as to costs.
22. It is hereby so ordered.

**RULING DEALIVERED, DATED AND SIGNED AT THIKA THIS 4<sup>TH</sup> DAY OF JULY 2024.**

**F. MUCHEMI**

**JUDGE**

