



**In re Estate of Paul Njane Njengi alias Paulo Gitau Njengi (Deceased) (Succession Cause 349 of 2001) [2024] KEHC 12240 (KLR) (11 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12240 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 349 OF 2001  
SM MOHOCHI, J  
OCTOBER 11, 2024  
IN THE MATTER OF THE ESTATE OF PAUL NJANE  
NJENGI ALIAS PAULO GITAU NJENGI (DECEASED)**

**BETWEEN**

**SAMUEL NJENGI NJANE ..... APPLICANT**

**AND**

**MARY NAYIKO NJANE ..... RESPONDENT**

**RULING**

1. Before me is a Chamber Summons Application dated 4<sup>th</sup> December 2023 filed under Section 47 of the [Law of Succession Act](#) seeking the following relief(s):
  - i. SPENT
  - ii. That, the Honourable Court do issue an order for the County Valuer or Apple Cross Valuers to value the deceased's Estate as per the consent rendered in Court on 28 February 2020.
  - iii. That, the costs of the valuation be withdrawn from a joint account No. 01286118224500 National Bank of Kenya, Molo Branch.
  - iv. That, the manager National Bank of Kenya, Molo Branch do provide the bank statement on the account No. 01286118224500 up to date.
  - v. That costs be provided for.
2. The application is supported by the Sworn Affidavit of Samuel Njengi Njane dated 4<sup>th</sup> December 2024 and is based upon the following grounds: -
  - I. That, a partial confirmation of grant was granted by the Court on 25<sup>th</sup> January 2021.



- II. That, the parties entered into a consent on 28<sup>th</sup> February 2020 on the partial confirmation that provided for valuation of the deceased's Estate including what parties had sold after the deceased's death.
  - III. That, the 2<sup>nd</sup> administrator Mary Nyakio Njane has refused to cooperate to have a valuer appointed to value the Estate
  - IV. That, the 2<sup>nd</sup> administrator Mary Nyakio Njane has refused to be depositing rents she collects from rental houses into the account agreed at National Bank in account no. 01286118224500
  - V. That, the refusal by the 2<sup>nd</sup> administrator Mary Nyakio Njane to co-operate in appointing a valuer has delayed the finalization of the consent rendered on 28<sup>th</sup> February 2020 and adopted by the Court on 25<sup>th</sup> January 2021.
  - VI. That in the interest of justice the application be allowed.
3. The Respondents filed a replying Affidavit by Samson Kariuki Njane dated 11<sup>th</sup> March 2024 in opposition to the summons contending that, allowing the present application as prayed will be granting the Respondents/Applicants Individual interest to the exclusion and detriment of the interests of the Objectors herein.
  4. That, the objector's interests were not well represented when the said consent was entered into by the Respondent's herein hence the application for stay of proceeding pending the intended appeal.
  5. That, the application is brought in bad faith as the Respondents/Applicants are well aware that the Objectors herein have filed an application in the Court of Appeal and that the same is still pending before Court but still brought the present application for personal selfish gain to the detriment of the objectors.
  6. That, the Respondents will suffer no prejudice if the present application is stayed pending the hearing and determination of the application and the appeal lodged in the Court of appeal.
  7. That, the present application lacks merit and the prayers sought are superfluous and it is our humble prayer that application be dismissed with costs.
  8. While the Respondents have showcased a Notice of Appeal including an Application for stay filed pursuant to Section 5(2) b of the Court of Appeal, this Court notes that, the same is arguable and this Court is unable to determine the prospects of success of the same, I however Note that the Respondents have to persuade the Court of Appeal to Stay the proceedings in this Succession Court. I shall leave the Appeal and interlocutory motion for the superior Court to determine.
  9. Regarding the second prerequisite, whether the appeal, if successful, would be rendered nugatory in the event a Court decline to grant the orders sought and the intended appeal succeeds, in Stanley Kang'ethe Kinyanjui vs Tony Ketter & 5 Others Others [2013] eKLR the Court of Appeal stated that:
    - “ix). The term “nugatory” has to be given its full meaning. It does not only mean worthless, futile or invalid. It also means trifling see Reliance Bank Ltd v Norlake Investments Ltd [2002] 1 EA 227 at page 232.
    - x). Whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is reversible; or if it is not reversible whether damages will reasonably compensate the party aggrieved.”



10. In *Reliance Bank Ltd vs Norlake Investments Ltd* [2002] I EA 227, the Court of Appeal held that, the factors which can render an appeal nugatory are to be considered within the circumstances of each particular case, and in doing so, the Court is bound to consider the conflicting claims of both sides.
11. In this instance the Impugned ruling dated 19<sup>th</sup> September 2023 dismissed the Applicants' Summons for Revocation of Grant dated 29<sup>th</sup> November, 2021 and declined to set aside a consent order. To this Court there is nothing to preserve worthy of an order of stay.
12. Back to the main motion This Court notes that the Respondents have deliberately failed to respond to the allegations raised against them and as such the Application is without response and that the Response by Samson Kariuki Njane dated 11<sup>th</sup> March 2024 has not in any way responded to the grounds of this Application.
13. This Court in exercise of its discretion and in appreciation that it is unacceptable to undertake a probate and administration for almost three decades shall allow the process to continue, I find favor with the Application dated 4<sup>th</sup> December 2023 and allow the same on the following terms;
  - i. An Order is hereby Issued for the County Valuer or Apple Cross Valuers to forthwith undertake a valuation the deceased's Estate as per the consent rendered in Court on 28<sup>th</sup> February 2020.
  - ii. The costs of the valuation to be undertaken shall be payable and drawn from a joint account No. 01286118224500 National Bank of Kenya, Molo Branch.
  - iii. The manager National Bank of Kenya, Molo Branch is hereby Ordered to provide a certified statement on the account No. 01286118224500 up-to date.
14. Parties shall bear their own costs.

It is so Ordered.

**SIGNED, DELIVERED VIRTUALLY ON TEAMS PLATFORM ON THIS 11<sup>TH</sup> OCTOBER 2024**

**MOHOCHI S.M**

**JUDGE**

