



In re Estate of Wilson Mwamba Nyamongo (Deceased) (Succession Cause 2217 of 2004) [2024] KEHC 11649 (KLR) (Family) (3 October 2024) (Ruling)

Neutral citation: [2024] KEHC 11649 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2217 OF 2004
HK CHEMITEI, J
OCTOBER 3, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE
WILSON MWAMBA NYAMONGO (DECEASED)**

BETWEEN

JOSEPH PHILIP NYAMONGO NYAGAMI APPLICANT

AND

NAFTAL OGWOKA MWAMBA RESPONDENT

RULING

1. In the summons dated 8th August 2023 the Applicant is seeking the following orders:-
 - (a) That this court be pleased to review, vary or set aside the ruling of Lady Justice Maureen Odero dated 26th May 2023.
 - (b) That the proceedings in this cause leading to the issuance of the grant dated 20th September 2004 are null and void.
 - (c) That the grant of letters of administration issued to Naftal Ogwoka Mwamba the Respondent on 20th September 2004 be revoked.
 - (d) That Naftal Ogwoka Mwamba do return to this court the original copies of the grant of letters of administration dated 20th September 2004 for cancellation.
 - (e) That the estate of Wilson Mwamba Nyamongo (deceased) be distributed as indicated in the certificate of confirmation of grant issued by this court on 29th December 1993 through Milimani high court succession cause no 899 of 1991.
 - (f) Any other relief of this court.



2. The application is based on the grounds thereof and the sworn affidavit of the Applicant dated the same date.
3. At the time of writing this ruling there was no evidence of any response by the Respondent despite asking for more time on 4th March 2024 and on 15th July 2024.
4. From the Applicant's affidavit in support of the application it appears clearly that there was another succession cause relating to the estate of the deceased herein namely Succession Cause No 899 of 1991. There is a gazette notice number 1363 of September 1991 to that effect.
5. The court on 7th December 1991 issued a grant to Josiah Nyangami Mwamba and it proceeded to confirm the same on 29th December 1993. In the said confirmation Josiah Nyangami Mwamba, Naftal Ogwoka Mwamba, Enosh Mwamba and Dorica Mwangi Mwamba were each bequeathed a portion of the estate.
6. From the said affidavit it appears that there has never been a challenge to the above cause and the filing of this cause was therefore a duplication. I don't think the Respondent was ignorant of the 1991 cause when he filed this current cause in 2004.
7. Assuming that he was, this court cannot countenance a situation where there are two sets of succession causes. In effect the first will always take precedence.
8. I doubt whether my sister Odera J was in the know when she made the ruling on 26th May 2023 as neither of the parties brought it to the attention of the court. She proceeded under a presumption that the only cause was the one at hand.
9. In view of the above sentiments the court agrees with the Applicant that this is a matter meriting a review. The issues raised I doubt were in his knowledge at the time of making the objections earlier made.
10. In the absence of the response by the Respondent, which in my view it would not have made any difference as there existed a legitimate earlier grant this court finds merit in the application and orders as hereunder:-
 - (a) The grant issued to Naftal Ogwoka Mwamba on 20th September 2004 is hereby cancelled and or revoked for all intent and purposes.
 - (b) This cause is hereby consolidated with Cause Number 899 of 1991 which shall take precedence over this cause.
 - (c) The orders issued by this court on 26th May 2023 are hereby reviewed and set aside.
 - (d) Parties are at liberty to agitate their rights henceforth under Succession Cause No 899 of 1991.
 - (e) Costs shall be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI VIDE VIDEO LINK THIS 3RD DAY OF OCTOBER 2024.

H K CHEMITEI

JUDGE

