



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Nguti v Ndonge & another (Family Appeal 4 of 2019)
[2023] KEHC 619 (KLR) (2 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 619 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
FAMILY APPEAL 4 OF 2019
GMA DULU, J
FEBRUARY 2, 2023**

BETWEEN

TITUS NGUTI APPELLANT

AND

MARY MALINDA NDONYE 1ST RESPONDENT

MAWIYOO NDONYE 2ND RESPONDENT

(Being an appeal from the original ruling of Hon. Sagero in Makueni Chief Magistrate's Court Succession Cause No. 114 of 2018 pronounced on 30th July 2019)

JUDGMENT

1. In a ruling delivered on 30/07/2019, the magistrate's court dismissed an application by the appellant herein to be joined as an interested party, and concluded as follows:

“Having reasoned as above and being guided by the authorities cited and the law applicable, I find that the applicant in the Chamber Summons dated 25th March 2019 lacks locus standi to join the cause and the said application is dismissed with further directions that each party bears own costs.

2. Dissatisfied with the decision of the magistrate' court, the appellant Titus Nguti has come to this court on appeal on the following grounds:-
 1. That the Learned Senior Resident Magistrate erred in law and in fact in finding that the appellant had no interest in the deceased's estate for the reason that he was not a family member of the deceased's family.



2. That the Learned Magistrate erred in law and in fact by restricting the provisions of section 66 of the Law of Succession Act to exclude the appellant despite the fact that the appellant has a lawful claim against the deceased's estate.
 3. That the Learned Magistrate erred in law and in fact in failing to find that the appellant had sufficient legal interest in the deceased's estate and that he had a right in law to be enjoined as an interest party in any succession proceedings in respect of the deceased's estate.
 4. That the Learned Trial Magistrate erred in law and in fact in locking out the appellant from the succession cause respecting the deceased's estate and stating that the appellant had other avenues of finding out who were the deceased's estate administrators when in actual fact there was none.
 5. That the Learned Magistrate erred in law and in fact in failing to consider in totality the submissions filed by the appellant in support of his case.
3. The appeal was canvassed through filing written submissions. In this regard, I have perused and considered the submissions filed by Joseph Mwongela & company advocates for the appellant, as well as the submissions filed by MD Mwaura advocates for the respondents. Both counsel cited decided court cases.
 4. This is a succession matter and the law applicable is the *Law of Succession Act* (Cap. 160), and rules made thereunder.
 5. The application of the appellant in issue was dated 25th March 2019 and sought for leave of the court for the appellant to be joined as an interested party in the succession proceedings pending before the magistrates' court.
 6. The application was based on the grounds that the appellant was a party as plaintiff in Machakos PMCC No. 96 of 1991 wherein the deceased was defendant, that this succession cause had been filed in regard to the deceased estate and had not been confirmed yet, and that the appellant would seek to substitute the deceased name with the petitioners to enable proper determination of the civil suit.
 7. I note that the appellant's counsel has submitted at length on what constitutes an interested party in civil and constitutional proceedings. In my view, in succession proceedings like the present, the *Law of Succession Act* (Cap. 160) applies and not the Civil Procedure Act, unless specifically provided otherwise.
 8. The trial magistrate relied on section 66 of the *Law of Succession Act*, to refuse to allow the appellant to be joined as an interested party herein because he is neither a spouse, beneficiary on intestacy, the Public Trustee, or a creditor. In my view section 66 only gives priority of those who may be appointed by the court as administrators, but does not exclude other persons including claimants from the estate such as partial buyers of assets, from participating in the succession proceedings.
 9. The way I understand the application of the appellant, is that he wants to be made an interested party so that when ultimately an administrator is appointed by the court herein, he can apply to join the appointed administrator as a party in Machakos PMCC NO. 96 of 1991.
 10. Indeed, as stated by Nyamweya J. (as she then was) in Machakos High Court Succession Cause No. 78 of 1992 – *Annah Mbula Masilia –vs- Thomas Muthiani Masika & Another* the claim of the appellant will have to be resolved outside these succession proceedings. In my view, those other proceedings include Machakos PMCC No. 96 of 1991.



11. Though the application herein was somewhat novel, what the appellant wants is very clear, which is to be in a position to know the person who will ultimately be appointed administrator, so that he takes the steps at the right time, to apply to join that administrator in the proceedings in Machakos. In my view, therefore the magistrate should have considered section 47 of the Succession Act in determining the application. For clarity, section 47 of the *Law of Succession Act* provides as follows:

“47.The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.

Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice”.

12. I thus consider that in the interests of justice the magistrate should have allowed the appellant to be joined as interested party for a limited purpose which is to know who will be appointed administrator.

13. I thus find that the magistrate erred in finding that he appellant did not have locus standi.

14. Consequently, I set aside the trial magistrate’s ruling and order that the applicant be and is hereby joined as an interested party for limited the purpose of being informed the name or names of the administrators, when appointed by the court in Makueni Chief Magistrates’ Succession Cause No. 114 of 2018.

15. Parties will bear their respective costs of appeal.

DELIVERED, SIGNED & DATED THIS 2ND DAY OF FEBRUARY, 2023, IN OPEN COURT AT MAKUENI.

.....

GEORGE DULU

JUDGE

