



REPUBLIC OF KENYA



**In re Estate of Fr. Joseph Kariuki Njino (Deceased) (Succession Cause  
16 of 2016) [2023] KEHC 3307 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3307 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 16 OF 2016  
RN NYAKUNDI, J  
APRIL 20, 2023**

**RULING**

1. The applicant approached this court vide an application dated 12<sup>th</sup> October 2022 seeking the following orders;
  1. Spent
  2. That the RT. Rev. Bishop Dominic Kimengich be allowed to renounce his appointment as the executor of the estate of the late Fr. Joseph Kariuki Njino (the deceased herein) and the court be pleased to appoint someone else to act in that capacity (if need be) as the Honourable court may decide.
  3. That this Honourable court be pleased to hold that the affidavit annexed to the instant application is sufficient to show cause and/or has shown cause regarding the filing of accounts with respect to the estate of the deceased herein as ordered by the court.
  4. That this court be pleased to make such further orders and/or any other orders as this cause would require and/or deem fit.
2. The application is premised on the grounds set out therein and the contents of the affidavit sworn by the applicant in support of the same.

**Applicant's Case**

3. The applicant's case is that letters of administration of the will annexed with respect to the deceased were issued to Bishop Cornelius Kipng'eno Korir who passed away before the estate of the deceased could be confirmed. The applicant was then substituted in his place vide an application dated 29<sup>th</sup> July 2020. There are objection proceedings that have been instituted that the applicant cannot address himself on adequately and he is of the view that there are other people who are better placed to administer and answer to the issues.
4. He stated that he had not intermeddled with the estate and therefore estate there is not much that he would give account of about except to say that the estate is in the same state it is in as he found it at



the time Bishop Cornelius Korir died. He stated that there was an oversight to issue amended letters of administration which was noticed on 12<sup>th</sup> October 2022 when the letters of administration were issued. He contended that he could not apply for confirmation of grant when there was an application filed by Nancy Jeruto alleging to having a son of the deceased, who would be a beneficiary but was not included in the will.

### **Respondent's Case**

5. The objector opposed the application and sought that the application be allowed with some caveats. He sought to have the applicant remain as a trustee and stated that court needs to take notice that it is not disputed that the minor herein relates to the deceased as a son and sufficient provision ought to be made for him before the liquidation of the assets and its accruals to the various other beneficiaries if any. That as such, before any renunciation of executorship is effected the Applicant needs to surrender to court or to the objector all assets comprised in the estate including title deeds, log books, bank accounts, share certificate, insurance policies employment contracts amongst other assets. He stated that the Applicant is in custody of the original death certificate which needs to be surrendered to the Objector being guardian ad litem to the son of the deceased and as such the 1<sup>st</sup> in line of priority or the same be surrendered to court until final determination of the suit. He maintained that if the application is to be allowed, then the same has to have a caveat that the Applicant files statement of account in relation to the estate as from 20.5.2015 to date as per the provisions of Section 83(h) of the [Law of Succession](#) and the court order issued on 15.3.2021 by Hon. Lady Justice W.A. Omondi (as she then was).

### **Analysis & Determination**

6. Upon considering the application, responses thereto and the submissions by the parties, the following issues arise for determination;

Whether the applicant should be allowed to renounce his appointment as executor of the will

7. Section 59 of the [Law of Succession Act](#) provides as follows;

Any person who has been appointed by a will as an executor thereof may, either by oral declaration before the court or by writing under his hand, renounce executorship, and shall thereafter be finally precluded from applying for grant of probate of that will.

8. The applicant is well within his rights and the provisions of the law to renounce executorship.

Who can be appointed as an administrator

9. As the applicant is allowed to renounce his executorship, the next issue is the appointment of another executor. Section 63 of the [Law of Succession Act](#) provides as follows;

When a deceased has made a will, but-

- (a) he has not appointed an executor; or
- (b) the only executors appointed are legally incapable of acting, or have renounced their executorship, or have died before the testator or before receiving a grant of probate of the will, or have failed within the time limited by a citation to apply for probate thereof; or
- (c) all proving executors have died before completing administration of all the property to which the will applies,



a universal or residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

10. A residuary legatee is a person named in the will to receive the residue of the deceased's estate, while a universal legatee is a residuary legatee that receives the entire residuary estate. It therefore needs to be established whether the deceased's will had a residuary or universal legatee, and if not, who among them has priority to apply for a grant of letters of administration with will annexed.
11. Dennis Kipkoech, the objector, sought to be appointed as the executor of the will based on the claim that he is a son to the deceased. He has however provided no evidence to prove this and therefore I find that at this juncture it would not be proper to appoint him as an administrator to the estate as he is not even included in the will.
12. I note that none of the siblings have contributed to the present application but from the history of the file there appears to be issues between the family members and the church regarding the administration of the estate. In the premises, it is my considered view that it is in the best interests of the estate to allow the application for renunciation as follows;
  1. The applicant be and is hereby allowed to renounce his executorship forthwith.
  2. He be at liberty to produce to the court a status report and accurate inventory of the assets and liabilities of the estate.
  3. The following persons one Micheal Njuguna and Milcah Wamboi Njino be appointed as co-executors of the Probate estate of father Joseph Kariuki Njino/ The deceased.
  4. That the Probate and Administration Registry do amend the grant of letters of Administration dated 12<sup>th</sup> day of October 2022 to comply with this order.
  5. The matter be listed for a status conference on 5<sup>th</sup> of May, 2023.

It is so ordered.

**DELIVERED VIA E-MAIL DATED AND SIGNED AT ELDORET THIS 20<sup>TH</sup> DAY OF APRIL 2023**

.....  
**R. NYAKUNDI**

**JUDGE**

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