



In re Estate of Stephen Githiari Wamunyu (Deceased) (Succession Cause 12 of 2018) [2023] KEHC 3564 (KLR) (20 April 2023) (Ruling)

Neutral citation: [2023] KEHC 3564 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 12 OF 2018
FN MUCHEMI, J
APRIL 20, 2023**

BETWEEN

SAMALO WANJIRU NDUNGU PETITIONER

AND

GLADYS WANGECHI WANDETO 1ST OBJECTOR

ISAIAH WAMUNYU GITHIARI 2ND OBJECTOR

RULING

1. The application for determination dated November 24, 2022 brought under Rules 59(5) and 73 of the *Probate & Administration Rules*, Section 47 of the *Law of Succession Act* and Article 159(2)(d) of the *Constitution*, 2010 seeks for orders for appointing the applicant as an administrator of the estate jointly with the petitioner.
2. The respondent filed a Replying Affidavit dated January 6, 2023 in opposition to the said application. Two beneficiaries of the estate, one Jane Wamucii Muthungu and Peter Ndiritu Githiari each filed a Replying Affidavit dated January 6, 2023 opposing this application.

The Applicant's Case

3. The applicant states that the petitioner who is his sister the sole administratrix of the estate of the deceased. He further avers that the relationship with the respondent has not been cordial and that since his application dated March 16, 2022 was dismissed on November 23, 2022, all the dependants of the deceased have side-lined and discriminated him. The applicant further states that he is apprehensive that the respondent and the other beneficiaries will frustrate him further especially if the estate is to be administered by the respondent solely. As such, the applicant states that for the purpose of protecting his interests, he urges the court to appoint him as an administrator of the estate jointly with the respondent.



The Petitioner/Respondent's Case

4. It is the respondent's case that the applicant is a vexatious litigant evidenced by his numerous applications. The respondent contends that this is not the first time the applicant is interfering with the progress of the proceedings in this cause. Moreover, the respondent avers that the applicant has never been side-lined or left out in the affairs of the estate. He simply wants to delay the conclusion of the matter.
5. The respondent further avers that the other members of the family have agreed that the applicant is not fit to be included as an administrator of the estate.
6. In support of the respondent's case, the petitioner and one Peter Ndiritu Githiari a son of the deceased swore affidavits. Peter avers that the instant application is vexatious and an abuse of the court process. He further avers that the whole family had chosen the respondent as the administrator to the estate and they find no reason to appoint an extra administrator at this juncture.
7. The deponent states that the estate could have been distributed a long time ago except the various applications and objections made by the applicant. Moreover, the application for confirmation of grant was filed by the administrator on October 14, 2019 and the mediation report did not change the mode of distribution as drawn out in the said application for confirmation of grant.
8. The respondent's contentions were further supported by Jane Wamucii Muthungu, a sister in law to the respondent who avers that the application is without merit and an abuse of the court process. The deponent avers that the applicant's interests will not be prejudiced in any way should the respondent remain the only administrator. In any event, she deposes that the applicant has not shown any evidence on how his interests will be affected negatively. Moreover, the application for confirmation of grant was filed on October 14, 2019 and the mediation report was filed on the agreed mode of distribution. Furthermore, the deponent contends that the whole family of the deceased is against the applicant from being appointed as an administrator with the respondent.
9. Parties disposed of the application by way of written submissions.

The Applicant's Submissions

10. The applicant reiterates what he deposed in his affidavit and further relies on Section 66 of the [Law of Succession Act](#) and the case of [Re Estate of Kenneth Njagi Josiah \(Deceased\)](#) [2021] eKLR and urges the court to exercise its discretion and appoint him as an administrator in the estate as the respondent does not rank higher in priority over him pursuant to Section 66 of the [Law of Succession Act](#).

The Respondent's Submissions

11. The respondent submitted that this is an old succession cause as the interim letters of administration were issued on May 3, 2017. This is a duration of nearly 6 years and no application to revoke the grant has been made by the applicant in the matter. The respondent contends that the applicant cannot merely file an application to be made as an administrator at this late juncture without revoking the grant issued to her. The respondent further submits that she filed for confirmation of grant on October 19, 2019 and from then on, the applicant has filed application after application with the sole intention of delaying the final distribution of the estate of the deceased.
12. The respondent further submits that the applicant has not challenged the mode of distribution and therefore his claim that he is side-lined is a red herring to distract the court from concluding the cause herein. The respondent argues that the applicant is a vexatious litigant and she urges the court to order



the applicant to pay costs in the current application and previous dismissed applications before he can file an additional application.

Whether the applicant ought to be granted the orders sought.

13. The deceased in this cause died on January 5, 1984 and letters of administration intestate were issued to the respondent on May 3, 2019. The respondent thereafter applied for confirmation of grant on October 14, 2019 and the court confirmed the grant on January 25, 2020. The summons for confirmation was not opposed. The respondent/objector, filed an application dated January 26, 2021 for revocation of grant. On March 9, 2021 the parties agreed to refer the matter for mediation. The parties reached a settlement on June 22, 2021 which was filed in court indicating the mode of distribution agreed on by the parties.
14. It is important to note that during the mediation based on the language used which he said that he did not understand. The court the parties back to the mediator and directed that a language understood by all the parties be used in the process. On March 8, 2022, the court adopted the mediation settlement as judgement of the court.
15. The applicant on March 16 filed an application seeking stay of execution of the mediation settlement which was dismissed on November 23, 2022 for lack of merit. In the said application, the applicant alleged that there were minors in the estate and therefore a second administrator ought to be appointed to secure their interests. Despite making these allegations, the court found that the applicant did not provide any evidence to show that there were any minors in the estate and further that the applicant has always been present in court and before the mediator but had never made any such issues. Therefore, this court takes cognizance that this is not the first time the applicant is making an application for a second administrator to be appointed who is none other, but himself.
16. The applicant herein states that he has been side-lined by the administrator and his siblings and therefore his interests in the course are not secure. It is noted that no evidence of being side-lined or his interests being ignored has been adduced. As demonstrated in the mediation settlement the rest of the eleven (11) beneficiaries did not have an issue with the mediation settlement save for the applicant. This fact is strengthened by the two affidavits sworn by Jane Wamucii Muthungu and Peter Nderitu Githiari who depose that the whole family is against the appointment of the applicant as an administrator to the estate because it is meant to delay the determination of this cause.
17. It is imperative to note that this cause has been concluded for the court entered judgement on March 8, 2022 based on the mediation settlement. Distribution of the estate has been delayed by this application. The applicant has not demonstrated that the respondent has failed to carry out her duties as an administrator. In fact he is the one delaying the distribution of the estate by filing application after application. In my humble view, the applicant has not demonstrated the need to add a second administrator at this state. Appointing the applicant or any other person as a co-administrator at this stage will not serve any useful purpose. The applicant's contention that his interests in the estate are at risk does not make sense because he, like other beneficiaries have already been bequeathed their rightful shares and the only pending issue herein is the distribution of the estate.
18. Consequently, I find no merit in this application and it is hereby dismissed with no order as to costs. However, the applicant will be condemned to pay costs if he files another application herein.
19. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 20TH DAY OF APRIL, 2023.

F MUCHEMI



JUDGE

Ruling delivered through videolink this 20th day of April, 2023

