



REPUBLIC OF KENYA



**In re Estate of Muhia Mbucho (Deceased) (Succession Cause E461 of 2022)
[2023] KEHC 19671 (KLR) (Family) (23 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19671 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E461 OF 2022
MA ODERO, J
JUNE 23, 2023
IN THE MATTER OF THE ESTATE OF MUHIA MBUCHO
(DECEASED)**

BETWEEN

**MARY NDU TA MUHIA 1ST CITOR
HANNAH MUGURE NDU TA 2ND CITOR
RAPHAEL MBU CHO 3RD CITOR**

AND

**FLORENCE WAGITHI MUHIA MBU CHO 1ST CITEE
NANCY NDU TA MUHIA 2ND CITEE
CATHERINE WAMBUI MUHIA 3RD CITEE**

RULING

1. Before this Court is the Citation to Accept or Refuse letters of Administration Intestate dated March 14, 2022. The Citation was opposed.
2. The matter was canvassed by way of written submissions. The Citors did not file any submissions whilst the Citee filed the written submissions dated February 22, 2023.

Background

3. This matter relates to the estate of the late Muhia Mbucho who died intestate on March 11, 2021. A copy of the Death certificate Serial number 1134648 is annexed to the citation.



4. The Deceased was survived by the following persons:-

- 1) Lilian Nyambura Mwaura ID No 4428158 - Wife
- 2) Forence Wagithi Muhia Mbucho ID No 3562338 - Wife
- 3) Raphael Mbucho Muhia ID No 10089757 - Son
- 4) Lucy Wanjiru Muhia ID No 10551012 - Daughter
- 5) Nancy Nduta Muhia ID No 23620810 - Daughter
- 6) Mary Nduta Muhia ID No 11317317 - Daughter
- 7) Hannah Mugure Muhia ID No 22749757 - Daughter
- 8) Salome Wanjiru Muhia ID No 25240685 - Daughter
- 9) Catherine Wambui Muhia ID No 24242634 - Daughter
- 10) Raphael Mbucho Muhia ID No 27279330 - Son

5. His estate was said to comprise the following assets:-

Fixed Assets

Land

- 1) LR No 218/273 - Huruma Nairobi area
- 2) Kiganjo/Nembu/1708
- 3) Kiganjo/Nembu/1709
- 4) Kiganjo/Nembu/3018
- 5) ½ Share in Plot No 3 Mutati Gatundu South Ngarugo
- 6) E.E.C Plot No 480 – Huruma Nairobi
- 7) Lamu/Lake Kenyatta 1/1896
- 8) Ruiru/Mugutha Block 1/T.415

Current Assets

- 1) Credit Balance in Post Bank Account Number 0001050017751
- 2) Credit Balance in UNAITAS Account Number 1001644412
- 3) Motor vehicle registration number KCB 435Q
- 4) 6 Shares in Thome Farmers 4 Limited – entry number 11327.

6. The Citors Mary Nduta Muhia, Hannah Mugure Nduta And Raphael Mbucho Are Amongst The Children Of The Deceased. They Seek Orders To Compel The Citee's Florence Wagithi Muhia Mbucho, Nancy Nduta Muhia And Catherine Wambui Muhia who are widow and daughters of the Deceased to take out letters of Administration Intestate.

7. The Citors in their Affidavit in support for the Citation aver that following the demise of the Deceased no Petition for Grant of letters of Administration have been filed. That some of the beneficiaries



have consented to the Citors petitioning for letters of Administration but that the Citee's herein have declined to give their consent.

8. The Citation was opposed by the Citees through their Replying Affidavit dated March 30, 2022. The Citee's claim that the family held a meeting during which it was proposed that since the Deceased was a polygamous man each House appoint one person as Administrator of the estate. That the Citee's later learnt that the Proposed Administrators intended to exclude some beneficiaries leading to a dispute between the parties.
9. For this reason the Citee's refused to co-operate with the proposed Administrators. They therefore reject the Citors as proposed administrators of the estate of the Deceased.
10. The 1st Citor Mary Nduta Muhia then filed a supplementary Affidavit dated July 4, 2022 in which she annexed copies of the minutes of the Family meeting held on June 4, 2022 (Annexure MHR '2'). The 1st Citor argued that the persons alleged to have been excluded were not infact dependants of the Deceased under the law of Succession.

Analysis and Determination

11. I have considered the Citation before this court, the Reply filed thereto as well as the written submissions filed by the Citee's. The dispute between the parties herein only revolves around who should Petition the court for letters of Administration for the estate of the Deceased.
12. The law on citations is found in Part VI of the Probate and Administration Rules. The present citation is to direct a person to accept or refuse letters of Administration in an Intestacy cause.
13. In the case of *Josiah Muli Wambua – Deceased* [2014] eKLR Hon Justice William Musyoka stated as follows:-
 - “9. Intestacy, citation issue only in cases where no petition has been lodged in court. Citations are intended to trigger the process of applying for letters of Administration intestate in circumstance where the persons entitled to apply are not willing or are slow in moving the court in that behalf. The citor should not be a person who has himself already applied for the grant, for the citor should only apply for grant after the citee fails to so apply.”
14. The Deceased in this matter died intestate and to date no letters of Administration have been taken out in respect of his estate. The present citation has been brought by children of the Deceased. They have cited the wife and daughters of the Deceased.
15. The citors claim that Florence Wagithi Muhia Mbucho being a 'former wife' of the Deceased does not rank in priority in petitioning the court for letters of Administration Intestate.
16. Section 66 of the *Law of Succession Act*, Cap 160 Law of Kenya sets out the order of preference in taking out Letters of Administration. Priority is given to surviving spouses followed by the children of the Deceased.
17. 16. Rule 7(7) of the *Probate and Administration Rules* states as follows:-
 - “When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-



- a. surviving spouse or spouses, with or without association of other beneficiaries;
 - b. other beneficiaries entitled on priority according to their respective beneficial interests as provided by Part V;
 - c. the Public Trustee; and
 - d. creditors.
18. Where a person with a lesser right petitions for Grant of letters of Administration, they must annex to the Petition a consent signed by persons ranking in greater or equal priority to themselves.
19. The Citors together with the 2nd and 3rd Citee rank in equal priority for entitlement to Petition for a Grant.
20. The Deceased is said to have been a polygamous who had three wives. One of his wives is Deceased. The whereabouts of the other wife are not known. This leaves the 1st Citee who is a ‘former wife’ of the Deceased.
21. Section 29 of the *Law of Succession Act* defines a ‘dependant’ in the following terms:-
- “For purposes of this part, ‘dependant’ means-
- a. The wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
 - b. Such of the deceased’s parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
 - c. Where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death. [own emphasis]
22. In addition under Section 3 of the Act a ‘wife’ is defined as follows:
- “‘Wife’ includes a wife who is separated from her husband and the terms ‘husband’ and ‘spouse, ‘widow and ‘widower’ shall have a corresponding meaning.” [own emphasis]
23. Therefore, the 1st Citee Florence Wagithi Muhia Mbucho being a widow and ‘former wife’ of the Deceased together with the children of the Deceased, would rank in priority to all the other parties.
24. There is nothing in the law stopping a ‘former wife’ from applying for letters of Administration as Section 29 ranks a ‘former wife’ in equal terms of dependency as a ‘current wife’.
25. In order to resolve this impasse and given that the Deceased was polygamous I find it would be fair to have one (1) representative from each House jointly Petition the court for letters of Administration. In the circumstances I direct the parties to present to the court within fourteen (14) days the names of one (1) representative from each house.
26. Finally this citation is found to be without merit and is dismissed with no orders on costs.

DATED IN NAIROBI THIS 23RD DAY OF JUNE, 2023.

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MAUREEN A. ODERO
JUDGE

