



**In re Estate of Beigong Tomino (Deceased) (Succession Cause  
282 of 2003) [2023] KEHC 18542 (KLR) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18542 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 282 OF 2003  
RN NYAKUNDI, J  
JUNE 15, 2023  
IN THE MATTER OF THE ESTATE OF BEIGONG TOMINO – DECEASED**

**BETWEEN**

**EUNICE KATAMEI ..... 1<sup>ST</sup> PETITIONER**

**JENNIFER CHEROP ..... 2<sup>ND</sup> PETITIONER**

**AND**

**KEITH KIPRUTTO ..... OBJECTOR**

**RULING**

- 1 What is pending before this court is the objector's objection to the petitioners' mode of distribution dated December 2, 2014 on the basis that it is discriminatory and as such he seeks to have an equal share of the estate. The objector is a grandson to the deceased as he was the son of Patrick Frank Sambu who claims a share of the estate of the deceased.
- 2 The property that comprises the estate of the deceased as per the application for the letters of administration is the property known as Land Parcel No Baringo/Kapropita/8xx. The objectors' contention is that the allocated share of 0.01 Ha of the estate is discriminatory and unfair.
- 3 The petitioners filed an affidavit dated November 25, 2022 stating that the deceased left four land parcels and that the same was distributed among the beneficiaries of the deceased. Therefore, the objector had been provided for accordingly.
- 4 I have considered the facts of the case and the history of the matter and it is my strong view that to apportion the estate afresh at this juncture would not be in the interest of justice. I take note that the objector acknowledges the existence of property that was in Marigat and belonged to his father, thereby solidifying the claim that his father had his own property elsewhere. The objector seeks to inherit as a grandson as he claims a portion that was to be given to his father from his grandfather's estate.



5 In order to determine if he can be considered for an equal share of the estate we look to the provisions of the law on his position in the family as a grandson with regard to succession. Sections 28 and 29 of the Law of Succession Act provide as follows;

28. In considering whether any order should be made under this Part, and if so what order, the court shall have regard to-

- (a) the nature and amount of the deceased's property;
- (b) any past, present or future capital or income from any source of the dependant;

29. For the 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.

6 *In re Estate of Joyce Kanjiru Njiru(Deceased)* [2017] eKLR Judge Lucy Waruguru Gitari observed the following:

From the definition given under Section 29 (supra) the spouses and children of the deceased have priority to inherit the estate. The grandchildren and others can inherit if they were being maintained by the deceased prior to her death. In this present cause, the two grandchildren are not claiming interests as dependents but are coming in to claim the interests of their respective parents who are now deceased. My view is that the children are entitled to inherit the share which their deceased parents would have inherited. [Emphasis added]

7 I wholly agree with the learned judge. In the instance case, the appellants cannot lay their claim on this basis for they have not proved that the deceased herein maintained them.

8 The second instance is where the grandchild can stake his claim on his/her parents' right to inherit. Musyoka J. in the case of *Estate of Veronica Njoki Wakagoto (deceased)* (2013) eKLR described such a right in the following terms:

...grandchildren can only inherit their grandparents indirectly through their own parents, the children of the deceased. The children inherit first and thereafter the grandchildren inherit from the parents. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.

Whereas I agree with the Learned Judge, such must be clothed with legal powers to do so; he/she must first out seek and obtain letters of administration of their parents' estate. This is when he can claim his/her parents' inheritance from the estate of the deceased. In the instant case the appellants have not demonstrated that they have obtained letters of administration to allow them to stake any claim in the estate of the deceased."

9 I have perused the file and it is my considered view that the estate only comprised of the sole property known as Land Parcel No Baringo/Kapropita/8XX. The correct avenue that the objector should have



followed is to apply for grant of letters of administration for his father's estate and then approach this succession cause to be included as a beneficiary of his grandfathers' estate. He has not shown that he was maintained by the deceased prior to his death or that he has instituted a succession cause for his fathers' estate. In this connection I should like to refer to another aspect of the matter. The question about Locus Standi of the objector. In the case of [Law Society of Kenya vs Commissioner of Lands & Others](#), Nakuru High Court Civil Case No 464 of 2000 the court held that: "Locus standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in court of Law." Further in the case of [Alfred Njau and Others vs City Council of Nairobi](#) (1982) KAR 229 the court held that

the term *Locus Standi* means a right to appear in court and conversely to say that a person has no *Locus Standi* means that he has no right to appear or be heard in such and such proceedings." Thus in *Adenuga v Odumeru* (2003) 4 S.C it states as: *Locus standi* denotes the legal capacity, based upon sufficient interest in a subject matter, to institute proceedings in a court of law to pursue a certain cause. In order to ascertain whether a plaintiff has locus standi the statement of claim must be seen to disclose a cause of action vested in the plaintiff and also establish the rights and obligations or interests of the plaintiff which have been or are about to be violated, and in respect of which he ought to be heard upon the reliefs he seeks.

- 10 In Succession cases a rational argument can be mounted that the most significant event is an order by the probate court for a certificate of confirmation of grant to pave way for the transmission of the estate to the beneficiaries. The essential underpinnings of our system are twofold. Firstly constitutionally entrenched rights and freedoms be enforced by the courts to enhance the rule of law. And Secondly, all together the trial process as a such for the thought shall not be litigated ad infinitum. In connection with the claims or subject matter under the law of succession there are three questions that have troubled my heart as a judge. When does the cause of action arise? When does the time expire to limit a cause of action in probate? What then is the position on the principle of res judicata as set out in Section 7 of the [Civil Procedure Act](#). How do the principles in [Henderson vs Henderson](#) (1843-60) ALL E.R 378 observed as follows apply to the cause of Action in Succession matters. Thus: ".....where a given matter becomes the subject of litigation in, and of adjudication by a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in context, but which was not brought forward only because they have, from negligence, inadvertence, or even accident omitted part of their case. The plea of *res judicata* applies, except in special case, not only to point upon which the court was actually required by the parties to form an opinion and pronounce a judgement, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time"
- 11 The question will then arise why did parliament set out clear timelines on litigation involving probate and administration matters only to be ousted by section 76 of the [Law of Succession Act](#) with the following absurd clause: That a grant of representation whether or not confirmed may at any time revoked or annulled if the court decides either on application by any interested party or of its own motion.
- 12 Jurisdiction in respect of causes of action in Succession matters is time bound. The parties to a litigation petition for letters of grant of administration which sequentially follow gazetment of the probate cause by the government printer. The appointed legal representative will have 30 days to receive objections to the making of the grant. In the event no objection is admitted by the court the official appointment of the administrators under Section 66 of the [Act](#) takes effect. This petition contains proprietary



information on the assets of the deceased and the deceased dependents under Section 29 (a) & (b) of the Act. The next step would be to determine the various aspect of the estate to basically move the litigation to confirmation of grant. The appropriate timeline for tracing and identifying the deceased assets and liabilities is cubed at 6 months. Once the administrator/s determine the type of estate and action arising out of the entire scheme on movable or immovable properties and any such liabilities the law mandates proceedings for confirmation of grant be instituted. The effect is that the probate court issues a final decree on the subject matter for the administrator or administrators to transmit the estate as per the certificate of confirmed grant. Section 83(g) & (h) of the Act obligates the administrators to submit a probate account to the court within 6 months from confirmation of grant. If an administrator fails to comply with any of the prescribed provisions the court is entitled to provide leadership within the stipulated period. In accordance with Section 83 the probate court ought to move in that legal process to discharge the administrators from exercising administration over the estate of the deceased. The foregoing timeline survey on both procedural and substantive legal framework relating to Succession Petitions highlights the doctrinal barriers and practical difficulties that those who seek to challenge the certificate of confirmation of grant must surmount before exercising *Locus Standi* to revoke or a null the grant under the ambit of section 76 of the Act.

- 13 Clearly the doors of our courts should not be accessible to interlopers, busybodies or claimants with no rights whose cause of action do not raise any live issue for adjudication by the probate court. In this discussion I concur with the words of Justice Muhammad JSC in *Uwazuruonye v Governor Imo State* (2013)8 NWLR (PT 1355): Time is too precious for it to be wasted in the venture the appellant desires to involve the court. Courts have always firmly declined such invitation aimed at the tackling academic or hypothetical question
- 14 In the present case upon confirmation of grant the intestate estate was on confirmation of grant transmitted and vested with the various beneficiaries as decreed by the court. So what happens to claims to the same estate filed after many years of conveyance, assignment, sale or transmission to other third parties. It should be noted that on account of that certificate of confirmation issued by the court to the administrator of administrators they had the legal capacity to administer the estate of the deceased in accordance with the instrument. My take is that Section 7 of the Civil Procedure Act should apply in Mutatis Mutandis to probate and administration cause of action. It is important to point out that section 76 of the Law of Succession was not meant to render other provisions of the statute moribund. It is time the legislature takes appropriate measures within its constitutional mandate to revisit the phrase: that a grant of representation whether or not confirmed may at any time be revoked or annulled if the court decides. There is an elephant in the room in the form of these words prescribed in Section 76 of the Act. I do not think that the intention of the legislature was to cause litigation in Succession Matters to significantly operate in circumstances where parties re open closed and settled disputes denovo.
- 15 In the premises, the objection to the mode of distribution fails. This is a fairly old matter and I ponder on the status of the estate at this point in time, wondering if the property even still exists. I therefore encourage the parties to close this matter by finalising the distribution as per the mode of distribution which was proposed close to 9 years ago as soon as possible.
- 16 As this is a family issue, each party shall bear its own costs.

**DELIVERED VIA E-MAIL DATED AND SIGNED AT ELDORET ON THIS 15<sup>TH</sup> DAY OF JUNE 2023**

**R. NYAKUNDI**

**JUDGE**



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