



**In re Estate of Grace Wangari Njoka (Deceased) (Miscellaneous Application E274 of 2022) [2023] KEHC 20303 (KLR) (Family) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 20303 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MISCELLANEOUS APPLICATION E274 OF 2022  
PM NYAUNDI, J  
JUNE 15, 2023**

**BETWEEN**

**STEPHEN MAINGI MIGICHI ..... 1<sup>ST</sup> APPLICANT**

**EMILY NGONYO MAINGI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**STEVE KIRUBI NJOKA ..... RESPONDENT**

**RULING**

1. The Summons for determination by this Court is presented Under Section 54 and Clause 14 of the 5<sup>th</sup> Schedule of the *Law of Succession Act* and rules 49 and 73 of the *Probate and Administration Rules* and all enabling provisions of the law. The Applicant seeks the following orders-
  - a. Spent
  - b. THAT the Respondent STEVE KIRUBI NJOKA be appointed as the legal representative of the Estate of GRACE WANGARI NJOKA for the purpose of substitution of the deceased as a defendant in a civil suit filed at the Environment and Land Court at Thika being Suit No 57 of 2020, limited for the purpose of representing the deceased in a suit and until a final decree shall be made therein and carried into complete execution.
  - c. THAT provision be made for the cost of this Application
2. The Application is supported by the Affidavit of the 1<sup>st</sup> Applicant sworn on the December 19, 2022 and further Affidavit sworn on April 29, 2023. The Respondent opposes the Application by Replying Affidavit sworn on the February 20, 2023.



3. The Applicant submits that they have a matter pending before the Thika Court in which the deceased was the defendant and she has died before its conclusion. No letters of Administration have issued in respect of the estate of the deceased. The Respondent herein is her son and has actively participated in the matter as evidenced by witness statement dated August 7, 2018 filed by him in the matter.
4. The Applicant relies on the decisions in *John Muthee Matumo v Thomas Gerishon & 4 others [2022] eKLR* and *In The Matter Of The Estate Of Gilbert Kibiti Rinchini (Deceased) [2013]eKLR*, on the procedure of substituting deceased persons in pending matters and when to revive a suit after it has abated.
5. The Respondent opposes the Application on the following grounds that
  - a. He is not privy neither is he party to the proceedings in Thika ELC Suit No 57 of 2020.
  - b. He is not the legal representative of the estate of his late mother who is a defendant in the matter in the Thika Court
  - c. The Application is flawed as the Applicants out to have moved the Court by way of citation
  - d. That the matter in the Environment and Land Court has abated and the Court cannot therefore substitute the Respondent and in any event the Applicant is guilty of laches (sic) and indolence.
6. The Respondent identifies the issue for determination as to whether the Respondent should be substituted in place of Grace Wangari Njoka (deceased) in THIKA ELC NO 57 of 2022 and relies on Order 24 Rule 4 and decision in the case of *Boniface Kamau Njoroge v John Waweru Wanjohi [2021]eKLR* in support of the proposition that he cannot substitute the deceased as he is not the legal representative of the deceased.

#### **ANALYSIS AND DETERMINATION**

7. Based on the pleadings and submissions filed herein I find the issue for determination to be whether this Court should appoint the Respondent as legal representative of the estate of Grace Wangari Njoka (Deceased)

8. Section 54 provides

##### Limited Grants

A court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act.

Clause 14 of the Fifth Schedule provides

14. Administration limited to suit

'When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such a suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution'



9. I note that the facts in the instant case are on all fours with the facts in the case of In The Matter Of The Estate Of Gilbert Kibiti Rinchini (supra), where Makau J in holding that it was not necessary to take out a citation allowed the Application for grant of Limited letters of Administration Ad Litem and observed as follows

'In the circumstances and in the interest of doing substantial justice and applying the provision of Section 1A and 1B of the Civil Procedure Rules, in determining all matters, the Court must bear the oxygen principle in mind, all things which are in conflict with the oxygen principle, must give way to the oxygen principle and aim at doing substantive justice.'

10. To this I would add that it is evident that these provisions are intended to give life to the Constitutional guarantee of Access to Justice as provided for under Article 48 and right to a fair hearing as provided for under Article 50(1).

11. For these reasons, the Summons dated December 19, 2022 is allowed and orders as hereunder

- a. Letters of Limited Grant do issue to STEVE KIRUBI NJOKA limited for the purpose of substituting of the deceased GRACE WANGARI NJOKA as the defendant in THIKA ELC Suit No 57 of 2020, limited for purpose of representing the deceased in the suit and until a final decree shall be made therein and carried into complete execution.
- b. Each party will bear their own costs.

It is so ordered.

**SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 15<sup>TH</sup> DAY OF JUNE, 2023.**

**P M NYAUNDI**

**JUDGE**

**In the presence of:**

.....**Advocates for the Applicant**

.....**Advocates for the Respondent**

**Karani Court Assistant**

