



REPUBLIC OF KENYA



In re Estate Priscillah Watahi Wangoru (Deceased) (Succession Cause E128 of 2021) [2023] KEHC 18867 (KLR) (14 June 2023) (Ruling)

Neutral citation: [2023] KEHC 18867 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE E128 OF 2021
HM NYAGA, J
JUNE 14, 2023
IN THE ESTATE OF PRISCILLAH WATAHI WANGORU
(DECEASED)**

RULING

1. The instant cause was commenced by the Applicant Cyrus Waweru Wangoru, vide the Citation Notice dated June 26, 2021 requiring the respondents Winnie Muthoni Kihara, Danson Mahugu Wangoru, Rose Wakonyo Kiboi, Peter Chege Wangoru and Alice Wangari Wangori, to accept, refuse or show cause why Letters of Administration Intestate in respect of the estate of Priscillah Watahi Wangoru (the deceased) should not be granted to him.
2. In his Supporting Affidavit sworn on the even date, the applicant averred that, the deceased died on May 14, 2016 intestate leaving behind him, Winnie Muthoni Kihara, Alice Wangari Wangoru, Danson Mahugu Wangoru, Rose Wakonyo Kiboi and Peter Chege Wangoru who are entitled to and in priority to any other person to share in the estate of the deceased.
3. He averred that the deceased herein was their mother and that his aforesaid siblings have not given their consent to the grant of letters of administration nor taken out letters of administration intestate of the deceased's estate.
4. He is desirous of obtaining letters of administration intestate of the deceased's estate.
5. Upon being served with the notice aforementioned, the respondents filed their joint response vide their Replying Affidavit sworn on January 25, 2022. They averred that the citor is economical with facts because at no point did they refuse to consent by appending their signatures for the purpose of filling succession proceedings as alleged.
6. They deponed that the citor has never supplied them with any draft succession pleadings requiring their consent and neither has he ever communicated to them of his intention of filing succession proceedings.



7. They averred that being beneficiaries and ranking in equal priority in taking the letters of administration as the citor herein, have been willing to have succession done and sometime in June 2021 they instructed the firm of Wamaitha Makori & Company Advocates to institute succession proceedings in respect to the estate of the deceased.
8. That upon receipt of instruction, the said firm drafted the succession pleadings which placed as per their consensus Alice Wangari Wangoruh & Winnie Muthoni Kihara as the proposed administrators and the draft pleadings were sent to citor requiring his consent for the purpose of commencing the process of obtaining letters of administration.
9. They deposed that owing to the above, it is evident the citor has not shown any seriousness in having the petition for succession for letters of administration filed and has not been interested at all in taking out the letters of grant administration to the estate of the deceased.
10. They believe the instant application is meant to waste the precious judicial time and amounts to an abuse of the court process.
11. It was their deposition that it is evident the citor is guilty of laches as he is the one who has hindered the process of filing the petition for letters of administration and therefore he has come to court with unclean hands.
12. They believe the instant application is also improper, bad in law, lacks merit and should be dismissed with costs to them.
13. When the matter came up for mention on February 20, 2023 parties took directions to canvass the citation by way of viva voce evidence. However, it never proceeded due to absence of the citees. The counsel for the Citor on May 31, 2023 told this court that the citees can be given time to take out letters of administration intestate and in default the citor to do so.
14. From the pleadings, the issue for determination by this court is whether the orders sought should be granted and who is entitled to take out the Letters of Administration intestate to the estate of the deceased.
15. The law on citations is set out in Part VI of the *Probate and Administration Rules* (P&A Rules) where three types of citations are set out. The first citation is to accept or refuse a grant, while the second is to take probate on a will. The third one is intestacy and in this third category a person who is entitled to administer the estate of the deceased may be cited by the court to accept or refuse a grant of letters of administration. This matter falls under the third category. If the person cited refuses or fails to appear upon being cited or to apply for the grant, the Citor may proceed to petition the court for grant.
16. In the case of *Josiah Muli Wambua (deceased)*, Nairobi Succession Cause No 2557 of 2012 [2014] eKLR W. Musyoka – J stated the following at paragraph 9 of his ruling: -

“In 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 circumstances 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.”

17. Section 66 of the *Law of Succession Act* provides that:

“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 The surviving spouse or spouses, with or without association of other beneficiaries;
- b Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- c The Public Trustee; and
- d Creditors...”

18. The parties herein are siblings and therefore they rank equally in priority as beneficiaries of the estate of the deceased. From the facts of this cause, it appears both parties are desirous of obtaining letters of administration intestate. There is no evidence that was advanced by the citor to prove that the citees declined to give their consent to him to apply for the grant. The citor however, told this court that the citees can be given time to apply for the same.
19. The citees indicated that they had proposed Alice Wangoruh & Winnie Muthoni Kihara as administrators of the estate and they have attached pleadings to show they had commenced the process of obtaining letters of administration.
20. Consequently, I allow Alice Wangoruh & Winnie Muthoni Kihara as the persons to institute succession cause within sixty days from the date of this ruling and thereafter be appointed administrators.
21. All the parties should participate and cooperate in the process thereof. Should they fail to do so on any ground other than lack of co-operation by the citor, then the citor is at liberty to apply for the grant but has to ensure he obtains the consent of the other beneficiaries, or serves the appropriate citation in the event there is no consent forthcoming.
22. This matter shall be mentioned in sixty days to confirm compliance.
23. There shall be no orders as to costs.

Dated, Signed and Delivered at Nakuru this 14th day of June, 2023.

H M NYAGA

JUDGE

In the presence of;

C/A Jeniffer

Ms Achieng for Applicant/Citor

N/A for citee

