



In re Estate of Peter Karani Orato (Deceased) (Succession Cause E826 of 2022) [2023] KEHC 22391 (KLR) (Family) (21 July 2023) (Ruling)

Neutral citation: [2023] KEHC 22391 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE E826 OF 2022

MA ODERO, J

JULY 21, 2023

IN THE MATTER OF THE ESTATE OF PETER KARANI ORATO (DECEASED)

BETWEEN

JANET LWAE ORATO APPLICANT

AND

HALIMA ABDI 1ST BENEFICIARY

ANTONY ORATO KARANI 2ND BENEFICIARY

NICHOLAS ORATO KARANI 3RD BENEFICIARY

RUMANA ORATO KARANI 4TH BENEFICIARY

JULIET ORATO KARANI 5TH BENEFICIARY

ISHMAEL ORATO KARANI 6TH BENEFICIARY

RULING

1. Before this Court for determination is the Notice of Motion Application dated May 16, 2022 by which the Applicant Janet Lwae Orato seeks the following orders:-

- “ 1. Spent.
- 2. Spent.
- 3. That this honourable court be pleased to order a temporary injunction restraining the 1st Respondent either by herself, her agents, servants and/or personal representatives from selling, alienating, disposing or dealing with any property of the estate of the deceased in any prejudicial manner pending the



hearing and determination of the petition for grant of letters of administration Ad Colligenda Bona dated May 16, 2022 filed herein.

4. That this honourable court be pleased to order mandatory injunction compelling the widow of the deceased, Halima Abdi (the 1st Beneficiary) to disclose all the assets and liabilities of the deceased as at the time of his death for purposes of securing the estate of the deceased and for purposes of the issuance of grant of letters of administration Ad Colligenda Bona.
5. Spent.
6. That this honourable court be pleased to order that all rent payments and other income derived from the estate of the deceased be deposited in a joint interest earning bank account in the names of the proposed representatives of the deceased two families, Janet Lwae Orato and Halima Abdi pending the hearing and determination of the petition for letters of administration Ad Colligenda Bona.
7. That costs of the Application be provided for.”

2. The application which was premised upon Rule 67(1) of the *Probate and Administration Rules*, Section 1A, 1B and 3A of the *Civil Procedure Act* and all other enabling provisions of the law was supported by the Affidavit of even date and Further Affidavit dated September 4, 2022 sworn by the Applicant.
3. Thomas Odhiambo Orato, Augustine Orato, Ishmael Karani and Mary Nduku who are all beneficiaries to the estate each filed Further Affidavits dated September 4, 2022 in support of the Application.
4. The Respondent Halima Abdi opposed the application through Grounds of Opposition dated June 30, 2022 and her Replying Affidavit dated June 30, 2022 as well as the supplementary Affidavit dated February 7, 2023.
5. The application was canvassed by way of written submissions. The Applicant filed the written submissions dated November 21, 2022 whilst the Respondent relied upon her written submissions dated February 20, 2023.

Background

6. This Succession Cause relates to the estate of the late Peter Karani Orato (hereinafter ‘the Deceased’) who died intestate on April 15, 2022. Annexed to the Applicants supporting Affidavit dated May 16, 2022 is a copy of a Burial Permit serial Number 1702xxx. Also annexed to the Respondents Petition for Grant of letters of Administration Intestate dated June 30, 2022 is a copy of a Death certificate serial Number 1308xxx.
7. According to the Applicant the Deceased was survived by the following persons:-
 - (i) Janet Lwae Orato - Daughter
 - (ii) Antony Orato Karani - Son
 - (iii) Nicholas Orato Karani - Son
 - (iv) Rumana Orato Karani - Daughter
 - (v) uliet Orato Karani - Daughter



- (vi) Ishmael Orato Karani - Son
 - (vii) Zebeddi Karani Orato - Son
 - (viii) Halima Abdi - Wife
8. The Respondent on her part insists that her two (2) children namely:
- (a) Abdullah Karani Orato
 - (b) Aisha Karani Orato
- are also beneficiaries of the estate of the Deceased.
9. The Applicant alleges that the Deceased passed away in his residence in Eastleigh under suspicious circumstances and that the issue of the Deceased's death is currently under investigation by police.
10. The Applicant further alleges that the family are not aware of the full extent of the estate of the Deceased which information she prays that the Respondent be ordered to provide.
11. The Applicant prays that a Grant Ad Colligenda Bona be issued in her name and the name of the Respondent to enable them collect and preserve the estate of the Deceased. The Applicant also prays that all rental income derived from estate property be deposited into a joint interest earning account opened in the names of herself and the Respondent.
12. The Respondent in opposing the Application contends that the threshold for Grant of letters of Administration Ad Colligenda Bona has not been met as no special circumstances to warrant the issuance of such a grant has been demonstrated.
13. The Respondent takes issue with the implication that she may have had a hand in the death of Deceased. She accuses the Applicant of harassing her. The Respondent also takes issue with the fact that the Applicant failed to include her two (2) children of the estate of the Deceased.
14. Lastly the Respondent avers that property Title No LR 36/111/1070 and LR No 36/111/1059 are matrimonial property and do not form part of the estate of the Deceased. She prays that the Notice of Motion dated May 16, 2022 be dismissed in its entirety.
15. The other beneficiaries support the stand taken by the Applicant and they all assert that the suit properties belonged to the Deceased and therefore form part of his estate.

Analysis and Determination.

16. I have carefully considered the application before this court, the replies filed thereto as well as the written submissions filed by both parties. The question of who the genuine beneficiaries of the estate of the Deceased are and the question of whether the suit property form part of the estate of the Deceased or constitute matrimonial property as alleged by the Respondent are matters which cannot be determined on the basis of Affidavit evidence. These are both issues which would require to be canvassed substantively at an oral hearing at which witnesses would be called.
17. The only issue then for determination then is whether the circumstances merit issuance of a Grant Ad Colligenda Bona.
18. As a general rule a Grant may only be made upon notice to all other beneficiaries under Section 67 of the *law of Succession Act* which provides as follows:-

“ 67 Notice of application for Grant



- i. No grant of representation other than a limited grant for collection and preservation of assets, shall be made until there has been published Notice of the application for such grant inviting objectors thereto to be make known to the court within a specified period of not less than thirty (30) days from the date of publication and the period so specified has expired.”
19. Similarly Rule 36 (1) of the *Probate and Administration Rules* provides that where owing to the Special circumstances the urgency of the matter is so great that it would not be possible for the Court to issue a full Grant in sufficient time to meet the necessities of the case then any person may apply to the court for a Grant Ad Colligenda Bona to the estate of the Deceased.
 20. In this case the death of the Deceased is under investigation. There is no clarity regarding the extent and assets comprising the estate of the Deceased. There is no consensus regarding the status of the two (2) properties LR No 36/111/1070 and No LR 36/111/1059. Additionally, there is an ongoing suit in the Chief Magistrates Court being Milimani ELC No E064/2022.
 21. Given the above special circumstances I am of the view that there is need for issuance of a Grant Ad Colligenda Bona to provide for the collection and preservation of the estate of the Deceased.
 22. This is a Probate Court with a mandate to oversee the distribution of the estate to the genuine heirs. In undertaking that mandate the court is authorized to make such orders as may be necessary to meet the ends of justice and to prevent any waste and or dissipation of the estate.
 23. Section 47 of the *Law of Succession Act* vests court with wide discretion in granting protective powers of purposes of safeguarding the estate of a deceased person. It provides:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”
 24. Likewise, Rule 73 of the *Probate and Administration Rules* provides that:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
 26. In the circumstances I do find merit in this application and hereby make the following orders:-
 - (1) Grant of letter of Administration Ad Colligenda Bona to issue jointly to the Applicant Janet Lwae Orato and the Respondent Halima Abdifor purposes of calling in collecting and preserving the estate of the Deceased pending issuance of a full Grant.
 - (2) A temporary injunction be and is hereby issued restraining the Respondent from selling, alienating, disposing, transferring or in any other prejudicial manner dealing with the property as LR No 36/111/1070 and No LR 36/111/1059 pending issuance of a Grant.
 - (3) This being a family matter each side will bear its own costs.

DATED IN NAIROBI THIS 21ST DAY OF JULY, 2023.

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MAUREEN A. ODERO



JUDGE

