



REPUBLIC OF KENYA



In re Estate of David Aura Wesonga (Deceased (Succession Cause 257 of 2012) [2023] KEHC 20222 (KLR) (17 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20222 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 257 OF 2012
WM MUSYOKA, J
JULY 17, 2023**

Succession proceedings do not allow joinder of interested parties

The Applicant made an application to be joined as an interested party in a Succession Cause. The court held that the Law of Succession Act and the Probate and Administration Rules did not provide for joinder of interested parties. Applicants were to file whatever application that they had in mind and the court would deal with the application on its own merits.

Reported by John Ribia

Words and Phrases – definition of joined – definition of enjoined – definition of joined vis-à-vis enjoined – enjoin means to urge or injunct – Joined means adding parties to a cause.

Civil Practice and Procedure – applications – joinder of parties – meaning of the word enjoined vis-à-vis the meaning of the word “joined” – which was the right term to use in an application that sought to add parties to a cause

Law of Succession – succession proceedings – joinder application - whether succession proceedings allowed for a party to be added as an interested party.

Brief facts

The applicant sought to be enjoined as an interested party in a succession cause.

Issues

- i. Which was the right word to use between “enjoined” and “joined” in an application that sought to add parties to a cause?
- ii. Whether succession proceedings allowed for a party to be added as an interested party.

Held

1. If the court were to strictly take the word “enjoin” for what it meant, the application would be struck out for making no sense at all. “Enjoin” meant to “urge” or “injunct.”. That was not what the applicant intended to ask the court to order. The proper prayer should be for an order to be “joined.” The word “enjoin” was not used in any of the provisions in the and the for joinder or adding of parties to a cause.
2. The and the did not provide for joinder of interested parties. That would leave room for whoever sought intervention in a probate matter to just file their application, without seeking leave to be added as a party.



3. There were no parties in a succession cause, for such cause was not a suit in the same vein with the suits envisaged in the and the Civil Procedure Rules.

Application dismissed.

Orders

Applicant to file any application they had in mind for the court to deal with on its own merits.

Citations

Statutes

1. Civil Procedure Act (cap 21) — In general — Cited
2. Civil Procedure Rules, 2010 (cap 21 (Sub leg) — In general — Cited
3. Law of Succession Act (cap 160) — In general — Cited

Advocates

Ms. Gona, instructed by Gona J'Adungo & Company, Advocates for the applicant

Ms. Nabolindo, instructed by Nabolindo & Company, Advocates for the administrator

RULING

1. The application, dated May 15, 2023, is one of those where a party seeks to be “enjoined” as an interested party. If the court were to strictly take the word “enjoin” for what it means, the application would be struck out for making no sense at all. “Enjoin” means to “urge” or “injunct.” I am sure that is not what the applicant intended to ask the court to order. The proper prayer should be for an order to be “joined.” The word “enjoin” is not used in any of the provisions in the [Civil Procedure Act](#), cap 21, Laws of Kenya, and the [Civil Procedure Rules](#), for joinder or adding of parties to a cause.
2. The [Law of Succession Act](#), cap 160, Laws of Kenya, and the [Probate and Administration Rules](#) do not provide for joinder of interested parties. That would leave room for whoever seeks intervention in a probate matter to just file their application, without seeking leave to be added as a party. There are no parties in a succession cause, for such cause is not a suit in the same vein with the suits envisaged in the [Civil Procedure Act](#) and the [Civil Procedure Rules](#). I see no reason to grant the prayers sought in the application, dated May 15, 2023, because it is needless. Let the applicant file whatever application that he has in mind, the court shall deal with it on its own merits.
3. It is so ordered.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 17TH DAY OF JULY 2023

WM MUSYOKA

JUDGE

Mr Arthur Etyang, Court Assistant.

Appearances

Ms Gona, instructed by Gona J'Adungo & Company, Advocates for the applicant.

Ms Nabolindo, instructed by Nabolindo & Company, Advocates for the administrator.

