



In re Estate of Benard Mwaura Kariuki (Deceased) (Succession Cause 164 of 2010) [2023] KEHC 22627 (KLR) (20 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22627 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 164 OF 2010
HM NYAGA, J
SEPTEMBER 20, 2023
IN THE MATTER OF THE ESTATE OF BENARD MWAURA KARIUKI (DECEASED)
IN THE MATTER OF
MWAURA JAMES MURIITHI APPLICANT**

RULING

1. The Application before me is the Summons for Confirmation of Grant dated 21st December 2021 and filed in court on 17th January 2022.
2. The applicant seeks that the Grant of Letters of Administration issued to him be confirmed and that the distribution be made as proposed.
3. The Summons are supported by the Affidavit of the Applicant. He depones that Grant of Letters of Administration were issued to him and Lucy Wambui Mbugua on 26th August 2021. That the requisite 6 months waiting requirement was waived by the Court. That the property and beneficiaries of the estate have been identified.
4. When the parties appeared before me on 3rd May 2023, they agreed to file Submissions. At the time of writing this Ruling, no Submissions were in the court record. I also note that there was no response filed to the Application. If it was filed then it never found its way to the court file.
5. Be it as it may, I will consider the Application. From the outset, it must be noted that the Grant of Letters of Administration to the 2 administrators was made pursuant to the Ruling of my elder brother Justice J. Ngugi (as he then was) on 26th August 2021. He had found that the applicant, and his 2 siblings were dependants of the deceased and were entitled to benefit from the estate. The court gave further directions to the effect that the joint administrators and all other beneficiaries were to confirm the grant and if there was no agreement on the mode of distribution, either of them could file the Summons for Confirmation of Grant and the other to file their protest.



6. Pursuant to the above directions, the applicant could only file the Summons if there was no agreement by the beneficiaries and the co-administrators. This was a condition precedent to him filing this Application.
7. The applicant has not shown this court that there has been no agreement by the beneficiaries. In cases like this, if there is an Agreement, then the same is annexed to the Summons, signed by all the parties.
8. The grant of letters of administration to more than person is meant to ensure that one of them does not run away with the process. Even where there is just one administrator, he/she must be able to show the court that all the persons entitled to the estate have been involved or informed of the proposed distribution. In the instant case, the applicant appears to have acted alone, yet there is a co-administrator. He ought to have satisfied the court that the co-administrator and other beneficiaries are aware of the Application and have consented or not consented to it. There is nothing of the sort here.
9. I am of the view that this Application, if allowed as drawn and without been shown that there was input of the other administrator and beneficiaries, is a recipe for chaos, given the history of the matter. How did the applicant arrive at the proposed distribution? This is the question that the applicant ought to answer in his application. It is not enough to say that the parties who are not in agreement can file a protest. The process itself is meant to be consultative, not a one-man show.
10. I am therefore constrained to disallow the Application for now.
11. I hold that the applicant should act as directed by the court. He must show involvement of the co-administrator or her lack of co-operation. All the beneficiaries have to be made aware and their involvement is paramount.
12. I therefore direct that the applicant files a proper affidavit detailing what I have stated above. He should annex the consent if any signed, even if by just some of the beneficiaries. If there is no agreement, then each administrator is to file their proposed mode of distribution for the determination by the court. The matter is to be listed for compliance on a date that will be given shortly after delivery of this ruling.
13. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 20TH OF SEPTEMBER, 2023.

H. M. NYAGA

JUDGE

