



REPUBLIC OF KENYA



**In re Estate of James Ndungu Mahia (Deceased) (Succession Cause
220 of 2005) [2023] KEHC 23245 (KLR) (9 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23245 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 220 OF 2005
SM MOHOCHI, J
OCTOBER 9, 2023**

BETWEEN

**HANNAH NDUTA AKA ANNE NDUTA 1ST APPLICANT
ESTHER WANJIKU 2ND APPLICANT
JACINTA WANGECI 3RD APPLICANT**

AND

**MARTHA GATHONI NDUNGU 1ST RESPONDENT
HELLEN WANGU NDUNGU 2ND RESPONDENT**

RULING

1. The Application dated 24th November, 2022 was filed herein by the Applicants pursuant, Section 47 of the [Law of Succession Act](#), Chapter 160 Laws of Kenya. The Application seeks:
2. This cause concerns the estate of James Ndungu Mahia (Deceased) who died on 12th March 1997. The Application for the grant of representation of his estate was filed by John Muchiri Ndungu, Martha G. Ndungu, Hellen W. Ndungu and Phyllis M Ndungu.
3. A grant was thereafter issued on 26th July, 2005 to all the children of the deceased. However, the administrators failed to take any further steps towards prosecuting the matter. This Court pursuant to Section 73 of the [Law of Succession Act](#) issued the parties with notices but the parties failed to appear and thus the Court directed that the grant issued be revoked pursuant to section 76 (d) (i) of the [Law of Succession Act](#).
4. The Applicants are the children of the Late John Muchiri Ndungu who was the son of the deceased herein and one of the administrators therefore the Applicants are grandchildren of the deceased. In the Application, the Applicants seek:



- i. Spent
 - ii. That the Honourable Court do review and reinstate the Succession Cause and the Grant of Administration which was revoked by an Order of 7th December, 2018.
 - iii. That the Honourable Court be pleased, upon grant of prayer No. 2 above, to consolidate and dispose together Succession Cause No. 199 of 2006 and Succession cause No. 221 of 2005, since the administrators are the same in the said causes.
 - iv. That the Honourable Court be pleased to include the Applicants as beneficiaries and or interested parties in this cause.
 - v. That the Honourable Court be pleased to restrain the administrators/Respondents from intermeddling with land parcel number Ndundori/ Muguathi Block1/709 and further Order the Nakuru County Registrar to cancel any new dealings till this Succession Cause is Concluded.
 - vi. That the Honourable Court do order the Respondents to Show Cause why they should be prosecuted for an offence intermeddling with an estate of a deceased person by virtue of transferring land parcel number Ndundori/ Muguathi Block1/709 to third party of a deceased person and against the observations of the Honourable Court in its judgment dated 20th December, 2021 in succession Cause No. 199 of 2006.
5. The Application was supported by an affidavit of Hannah Nduta a.k.a Anne Nduta dated 24th November, 2022. According to the Applicants, the grant issued in respect to the deceased estate was revoked and the matter was marked closed. They now seek to have the suit reinstated in order to prosecute the Petition for Grant of Letters of Administration and seek to be appointed as administrator in place of the Respondents. She advanced that they were not aware of the existence of the suit at the time it was instituted as they were children at that time. Further, when the suit was dismissed and grant revoked on 7th December, 2018 they were not served with the notice.
 6. The Applicants claim to be direct beneficiaries of land parcel number Ndundori/ Muguathi Block1/709 through their deceased father. That the Respondents have mismanaged the estate and alienated the said parcel of land.
 7. The 1st Respondent filed a response sworn by Hanna Gathoni Gitau dated 9th June, 2023. In her response, she contends that she is not interested in being party to this cause and also in the property of the deceased. She denied selling land parcel number Ndundori/ Muguathi Block1/709 and that the signature was forged she also admitted that the estate of the deceased is yet to be distributed. She also prayed to be removed from these proceedings as she has already inherited from her mother in Nakuru Succession Cause No. 199 of 2006 Estate of Hannah Nduta Ndungu (deceased) and that she is content.
 8. She also opposed the consolidation of Nakuru Succession Cause No. 199 of 2006 Estate of Hannah Nduta Ndungu (deceased) and this cause the Nakuru Succession Cause No. 199 of 2006 Estate of Hannah Nduta Ndungu (deceased) since the same has been concluded and assets distributed.

Issues for Determination

9. Having considered the application, the affidavits in support and opposing the same and the respective submissions of the Applicants, it is my view that the main issues for determination by this Court are:
 - a. *'Locus Standi'*



- b. Whether the Application should be allowed.

Locus Standi

10. Before anything else, this Court has to determine whether the Applicants have 'Locus Standi' that is; are the Applicants properly before Court?
11. In *Michael Osudwa Sakwa v Chief Justice and President Supreme Court of Kenya & Another*. [2016] eKLR which referred to the matter of Ms Priscilla Nyokabi [Kanyua v Attorney General & I.E.B.C.](#) Nairobi H.C CP NO. 1/2010 stated that:-

“In Kenya the Court has emphatically stated that what gives Locus Standi is a minimal personal interest an such interest gives a person standing even though it is quite clear that it would not be more affected than any other member of the population.”
12. In the *Law Society of Kenya v Commissioner of Land & Others*, Nakuru H.CCC No.464/2000 the Court stated that,

“Locus Standi’ signifies a right to be heard. A person must have sufficiency of interest to sustain his standing to sue in Court of Law.”
13. The Applicants have attached the death certificate of John Muchiri Ndungu, the son of the deceased, dated 11th July, 2007 and a chief’s letter dated 17th July, 2017 signify that John Muchiri Ndungu is deceased and that the Applicants are his children.
14. The evidence on record suggests that the Applicants herein brought these proceedings on behalf of their father who was the beneficiary to the deceased’ estate.
15. The Applicants interest emanates from the fact that their father was a beneficiary to the suit property, thus the Applicants being dependent to their father’s estate within the provisions of Section 29 of the [Law of Succession Act](#), they therefore acquire an interest in their grandfather’s estate; the suit property by virtue of their father’s share.
16. The Applicants seek to pursue their father’s share of inheritance which risks to be interfered with and being sold to third parties. It is my view that the Applicants have demonstrated that they have a vested legal interest in the subject suit.
17. Therefore, in the Court’s view, the instant Application is properly before this Court.

Whether the Application should be allowed.

18. Prayers numbers 1 and No 3 have already been dealt and the Court will not dwell on them.
19. As regards to prayer 2, The Court does have powers, under Section 47 of the [Law of Succession Act](#) and Rule 73 of the [Probate and Administration Rules](#) to make such orders as would meet the ends of justice in such matters.
20. An order dismissing a matter for want of prosecution and the party fails to apply for the suit to be reinstated, the order forms the judgment in that suit. It becomes the final determination of the matter. In the event there is desire to reinstate the matter only parties to the claim or suit can apply for reinstatement.
21. The Court is alive to the fact that the children of the deceased were all administrators in this suit and the grant was issued to them.



22. If the Court reinstates the cause and the Applicants are allowed to prosecute the Petition, it would be reinstating a grant to persons who are not administrators which is unprocedural and unsustainable. There is no legal provision for such a process and as such this prayer cannot be sustained for want of form.
23. On prayer number 4, the Applicants also want to be recognized as beneficiaries of the deceased. *Re Estate of Veronica Njoki Wakagoto (deceased)* 2013 eKLR, where the Court pronounced itself as thus with regards to grandchildren inheriting from their grandparents; “
“... grandchildren can only inherit their grandparents indirectly through their own parents, the children of the deceased. The children inherit first and thereafter the grandchildren inherit from the parents. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents...”
24. The Court recognizes their legitimacy to the estate however with the failure of prayer no. 2 above this prayer equally fails.
25. As regards to prayer 5 and 6 also fails due to the failure of prayer 2 and also that the Applicants have not demonstrated acts of intermeddling nor why there should be a show cause.
26. The Application as drawn is not procedurally sustainable and therefore fails and is disallowed.
27. Be that as it may, this Court has a duty to preserve the Estate of a deceased person. It is in the best interests of justice that the Applicants are given an opportunity to claim what is due to their deceased father.
28. I invoke the inherent powers of this Court granted under Article 159 of *the Constitution*, Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules Cap 160, and grant leave to the Applicants to Petition a fresh for Grant of letters of Administration within 45 days from today.

DATED, DELIVERED AND SIGNED AT NAKURU ON THIS 9TH DAY OF OCTOBER, 2023

MOHOCHI S. M.

JUDGE OF THE HIGH COURT.

