



In re Estate of Julius Mwivithi Nzuku alias Julius Mwivithi Nzukuh (Deceased) (Probate & Administration E007 of 2024) [2024] KEHC 14192 (KLR) (15 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14192 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
PROBATE & ADMINISTRATION E007 OF 2024**

RK LIMO, J

NOVEMBER 15, 2024

**IN THE MATTER OF THE ESTATE OF JULIUS MWIVITHI
NZUKU ALIAS JULIUS MWIVITHI NZUKUH (DECEASED)**

BETWEEN

NZUKU MWIVITHI APPLICANT

AND

STELLA WANZA MWIVITHI 1ST RESPONDENT

ROSE KAVITA MWIVITHI 2ND RESPONDENT

RULING

1. The applicant Nzuku Mwivithi has moved this court to be appointed as one of the administrators in the estate of the late Julius Mwivithi Nzuki to represent the 1st house.
2. Mr. Mwalimu for the respondents and the administrators opposes the application on grounds that the applicant and the entire house of Alice Mulee Mwivithi (now deceased) is not recognized. Rose Kaviti Mwivithi in her replying affidavit sworn on 13/11/2024 avers that Alice Mulee Mwivithi was not a wife of the deceased.
3. She makes an interesting claim that the said Alice Mulee Mwivithi was married by the clan but does not state by who and relies on a deceased burial programme to demonstrate that the applicant was not recognized.
4. She further avers that the said Alice Mulee Mwivithi and her children were only allowed to use the name of the deceased.
5. She further submits that the deceased never lived in the house of the deceased and none of the children are biological children of the deceased.



6. She avers that none of the children of Alice Mulee Mwivithi went beyond form 4 while the children of Ruth Kawembe including herself went to the university level which to her avers that the deceased did not educate Alice Mulee's children.
7. He further claims that the said Alice Mulee Mwivithi was given a parcel of land by deceased out of generosity.
8. Mr. Mutinda counsel for some of the beneficiaries in the 2nd house representing Faridi Trix Mwivithi, Benjamin Mwivithi, Bretta Mwivithi and Kyalo Mwivithi from the 2nd house disputed the allegations by Rose kavita Mwivithi and threw his weight behind the applicant. Mr. Mutinda told this court that the deceased was married to 3 wives with Alice Mulee Mwivithi being the 1st wife. He further contends that he represents part of the 2nd house as there is division in the 2nd house.
9. He contends that the 1st respondent has been collecting rent in properties comprising the estate but has been distributing the proceeds unfairly locking out other beneficiaries. He asks this court to make Farida Mwivithi as one of the administrators.
10. This court at this stage has considered only prayer 2 of the application which relates to the appointment of administrators. The other prayers in the application can be canvassed later.
11. Mr. Kilonzi in rebuttal to the respondent's contention by the 2nd respondent that she does not recognize the applicant or Alice Mulee Mwivithi, drew the attention of this court to the Chief's letter dated 20/6/2022 which accompanied the petition for letters of administration by the administratrixes/ respondents herein and the Form P & A which shows that the respondents recognized the existence of the 1st house represented by the applicant.
12. This court finds that from the Chief's letter the deceased herein was married to 3 wives namely;
 - i. Alice Mulee Mwivithi – 1st wife
 - ii. Ruth Kalumu Mwivithi – 2nd wife
 - iii. Rose Kavita Mwivithi – 3rd wife.

The Chief's letter captures the children from each house with the applicant being named as 4th born from the 1st house while the 1st respondent is the 2nd born of the 2nd house.

13. Secondly in the petition for letters of administration, the petitioners/respondents swore 2 affidavits in Form P & A 5 and Form 38 expressly recognizing the 1st house.
14. The 2nd respondent now says the Chief was forced by Deputy County Commissioner to write a letter acknowledging the 1st house as dependants but no evidence have been exhibited from said Chief stating that he acted out of intimidation or fear. Furthermore, it is the respondents who voluntarily swore the affidavits when petitioning for letters of administration. They cannot possibly turn around and say that now they do not recognize the applicant or the entire house. That in my view is in bad faith and is aimed at fostering some mischief. The fact that some family members represented by Mutinda Advocate have broken ranks with the respondents puts more weight to that fact.
15. This court under Section 66 of the *Law of Succession Act* is granted the discretion to appoint administrators of an estate of a person who dies intestate. In exercising that discretion this court is required to ensure that respective interests of all beneficiaries are well catered for.

In that regard this court hereby finds merit in prayer 2 of the application dated 6/11/2024 and appoints the following as administrator and administratrixes namely;



- i. Nzuku Mwivithi to represent the 1st house
- ii. Trix Farida Mwivithi & Stella Wanza Mwivithi to represent the 2nd house
- iii. Rose Kavita Mwivithi to represent the 3rd house.

The 4 appointed administrator and administratrixes prospectively shall administer the estate in accordance with the law and render account of all assets, liabilities, and rents accrued from the estate of the deceased herein.

I further direct that any further proceeds henceforth from rents from the estate shall be deposited in a Joint Account to be opened by all the 4 administrators with the assistance of counsels on record.

The 2nd respondent is directed to file in this court a statement of account detailing all the rents proceeds collected from the assets comprising the estate and how the same have been distributed or utilized.

This matter shall be mentioned on 25/2/2025 for further directions in respect to the other prayers in the application dated 6/11/2014.

DATED, SIGNED AND DELIVERED AT KITUI THIS 15TH DAY OF NOVEMBER, 2024

HON. JUSTICE R. K. LIMO

JUDGE

