



**In re Estate of Elizabeth Wanja Kamau (Deceased) (Succession Cause
242 of 2016) [2024] KEHC 15403 (KLR) (Family) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15403 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 242 OF 2016
EKO OGOLA, J
NOVEMBER 14, 2024
IN THE MATTER OF THE ESTATE OF ELIZABETH WANJA KAMAU (DECEASED)**

BETWEEN

WAIRIMU KAMAU APPLICANT

AND

JACINTA MUMBI MBUTHI 1ST RESPONDENT

NANCY NJERI WAINAINA 2ND RESPONDENT

RULING

1. The deceased died intestate on 18th October 2015. She was survived by five children, daughters-in-law and grandchildren.
2. Before this court are two Petitions for grant of Letters of Administration Intestate.
3. The first is dated 8th June 2023, filed by Wairimu Kamau, the deceased daughter.
4. The second petition is dated 17th October 2023, filed by Jacinta Mumbi Mbuthi and Nancy Njeri Wainaina the deceased daughters-in-law.
5. The beneficiaries were directed to attend Court Annexed Mediation to settle the issue of who was to be appointed as administrators. The mediation report stated that James Wambu Kamau and Wairimu Kamau were to be the administrators of the deceased estate. All the deceased children, Jacinta and Nancy signed the mediation agreement. On 22nd March 2017, the mediation agreement was adopted as the Ruling of this Court.



6. The Order of the court has not been set aside or appealed. However, it seems that Jacinta and Nancy were later dissatisfied with the agreement and opted to file a petition to be appointed as administrators of the deceased estate.
7. The Petitions were canvassed by way of written submissions. Counsel for Wairimu Kamau argued that Wairimu is the deceased daughter and has the upper hand in being appointed the administrator. Furthermore, counsel submitted that the mediation agreement that was adopted as an order of this court has not been set aside. Therefore, this court is functus officio.
8. Counsel for Jacinta and Nancy argued that as daughters-in-law of the deceased, it is in the best interest of all the beneficiaries that they are appointed as administrators of the deceased estate.

Determination

9. I have considered the two Petitions, the Submissions and the entire record of the court.
10. The preliminary issue for determination is whether this court is functus officio by dint of the Court Order dated 22nd March 2017. The Supreme Court expounding on the doctrine of functus officio in *Raila Odinga & Others vs. IEBC & Others* [2013] eKLR citing with approval an excerpt from an article by Daniel Malan Pretorius, in “The Origins of the functus officio Doctrine, with Specific Reference to its Application in Administrative Law,” (2005) 122 SALJ 832 stated thus:

“The functus officio doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter.... The [principle] is that once such a decision has been given, it is (subject to any right of appeal to a superior body or functionary) final and conclusive. Such a decision cannot be revoked or varied by the decision-maker.”
11. The upshot of the above is that this court being functus officio is not seized of jurisdiction to determine the issue on the appointment of administrators. As a result, the Court Order dated 22nd March 2017 stands. James Wambu Kamau and Wairimu Kamau are hereby appointed as the administrators of the deceased estate. Grant of Letters of Administration to be issued accordingly.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF NOVEMBER 2024

E.K. OGOLA

JUDGE

In the presence of:

Ms. Thugu for the Applicant

Mr. Ndeabu for the respondent

Ms Gisiele M court Assistant

