



REPUBLIC OF KENYA



In re Estate of Mwangi Kamau Njuguna (Deceased) (Miscellaneous Cause E004 of 2022) [2024] KEHC 15286 (KLR) (5 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15286 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
MISCELLANEOUS CAUSE E004 OF 2022
CM KARIUKI, J
DECEMBER 5, 2024**

IN THE ESTATE OF MWANGI KAMAU NJUGUNA (DECEASED)

BETWEEN

MALEWA RANCHING COMPANY LIMITED APPLICANT

AND

JAMES MWANGI MBURU 1ST RESPONDENT

THE PUBLIC TRUSTEE 2ND RESPONDENT

RULING

1. The matter before this court is the notice of motion dated 8th March 2023 and supported by the affidavit sworn by Raphael Njaga Chege of even date. The applicant's primary request is to replace the citor Malewa Ranching with the public trustee, as per the following orders:
2. Spent.
3. The honorable court should be pleased to vary its orders of 23rd September 2022 by Hon. Justice Charles Kariuki and replace the citor Malewa Ranching with the public trustee.
4. That orders are issued to allow the public trustee, pursuant to the citation herein, to defend the Estate of the late Mwangi Kamau Njuguna in Nyahururu ELC Case No. E007/2020.
5. In a nutshell, the applicant based their application on the grounds that he filed the citation on 14th October 2021 to compel the 1st respondent to take up grant of letters of administration in the estate of the late Mwangi Kamau Njuguna, the estate hereinafter. It was stated that the purpose of the citation was to get a legal representative of the estate to defend the estate in Nyahururu ELC Case No. E007/2020, where the estate is the 1st defendant. Further, the court herein heard and allowed the citation on 23rd September 2022 and that despite service of the citation, the citor refused and neglected to file a petition for grant of letters of administration in the estate.



6. Moreover, the applicant contended that it is important that the orders issued on 23rd September 2022 be varied and that the public trustee be allowed to defend the estate of the deceased because the beneficiaries have intentionally refused to take up letters of administration to frustrate and defeat the applicant's claims against it.
7. In response, the public trustee, represented by William Malombo, Assistant Public Trustee, filed a replying affidavit dated 19th January 2024. In this affidavit, it was stated that the public trustee is not privy to any information concerning the estate of Mwangi Kamau Njuguna and/or the legal relationship between the applicant and the deceased. The public trustee is unwilling to take up the administration of the estate due to past experiences where beneficiaries have been reluctant to provide crucial information.
8. The court directed parties to file and exchange submissions, but according to the record, only the respondent complied.
9. 2nd Respondent's Written Submissions
10. Issues for DeterminationShould the court order the public trustee to take out a grant in the estate and defend the said estate in ELC Case No. E007/2020Whether the application offends the doctrine of exhaustion of available remedies.Whether the applicant is entitled to the reliefs sought.
11. On the first issue, the 2nd respondent stated that according to Section 66 of the [Law of Succession Act](#), the public trustee does not rank first in priority in the administration of the estate of a deceased person. Therefore, it is in the interest of justice that priority should be given to all the surviving beneficiaries in line before the public trustee. Reliance was also placed on *In re Estate of Anastasia Muringi Ndung'u (deceased)* [2021] eKLR, *In re Estate of the Late Havaton Kavava Maingi* [2019] eKLR
12. It was argued that there are known beneficiaries of the estate and that it was apparent that the applicant had not exhausted all avenues to compel all surviving beneficiaries to obtain a grant of letters of administration and that the public trustee is an administrator of last resort and should only be appointed to come in where all legal beneficiaries have failed and or refused to take out a grant of representation. Further, it was argued that the public trustee lacks knowledge of the estate's information and that they cannot be used as a shield nor be compelled to take over the management of the estate of a private citizen without the express consent of the legal or lawful beneficiaries. Reliance was placed in *re Estate of Gurdial Kaur Sihra (deceased)* [2018] eKLR, Section 6 of the [Public Trustee Act](#), Rule 26 (2) of the Probate and Administration Rules, *Fredrick Wachira Ndegwa (substituting Ndegwa Wachira (deceased) v Richard Wanjiku Ndanjeru & Anor* [1997] eKLR
13. On the doctrine of exhaustion, it was asserted that the available remedy envisaged herein is the citation procedure, which the applicant should have opted for in not only securing his interests but also facilitating the expeditious finalization of the pending suit. Reliance was placed on *Speaker of National Assembly v Karume* [1992] KLR 21, *Josiah Muli Wambua -deceased, Nairobi Succession Cause No. 2557 of 2012* [2014] eKLR, *re Estate of Anthony George Kimanthi* [2018] eKLR, *John Jandi Kibigo v Ayiego Kibigo* [2017] eKLR, Part VI of the Probate and Administration Rules
14. On the third issue, the 2nd respondent submitted that varying the orders issued on 27th January 2023 to appoint the 2nd respondent as an administrator or personal representative in such circumstances would be setting it up for failure and could potentially prejudice the estate's interests as they lack the necessary information, familiarity and cooperation from beneficiaries to represent the estate's interests in the land case effectively. Further, it was stated that the matter had been decided to finality, and therefore,



the court became functus officio. Reliance was placed on *John Gilbert Ouma v Kenya Ferry Services Limited* [2021] eKLR

15. In conclusion, the second respondent invited the honorable court to dismiss this application in its entirety, with costs to the applicant, as it lacks merit and is a waste of precious judicial time.
16. Analysis and Determination
17. The law on citations is set out in Part VI of the Probate and Administration Rules (P&A Rules), where three types of citations are set out. The first citation is to accept or refuse a grant, while the second is to take probate on a will. The third one is intestacy, and in this third category, a person who is entitled to administer the estate of the deceased may be cited by the court to accept or refuse a grant of letters of administration. This is what the Applicant, in this case, applied for and was granted by this court. If the person cited refuses or fails to appear upon being cited or to apply for the grant, the Citor may proceed to petition the court for a grant.
18. In this case, the Applicant contends that despite service of the citation, the citee refused and/or neglected to file a petition for a grant of letters of administration in the estate. Thus, the applicant contended that it is essential that the orders issued on 23rd September 2022 be varied and that the public trustee be allowed to defend the estate of the deceased because the beneficiaries have intentionally refused to take up letters of administration to frustrate and defeat the claims against it by the applicant. It is common ground that the Applicant is not a dependent for purposes of Section 29 of the *Law of Succession Act*; thus, he is not ranked in parity with the Citees or with any of the surviving family of the deceased. In this regard, Section 66 of the *Law of Succession Act* provides that:

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

 - a. surviving spouse or spouses, with or without association of other beneficiaries;
 - b. other beneficiaries entitled to intestacy, with priority according to their respective beneficial interests as provided by Part V;
 - c. the Public Trustee, and
 - d. creditors:
 - b. Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.
19. While the 1st Respondent may have refused or neglected to petition the court for letters of administration upon being cited, I am of the considered view that this fact does not give leeway to the Applicant to proceed and take out a citation against the public trustee. The Applicant ought to exhaust the list of beneficiaries provided in Part V of the *Law of Succession Act* before urging the court to issue a citation to the public trustee.
20. In my view, the public trustee would only be considered by the court if all the beneficiaries in Part V have been exhausted. The Applicant, in this case, has failed to demonstrate that all the beneficiaries to the estate of the deceased have failed or refused to petition the court for letters of administration in spite of being cited to do so. In any event, a citation has already been issued upon the application by the Applicant, and this court became functus of the officio with regard to that citation. The court



cannot vary a citation already issued. The only remedy available would be for the Applicant to take out the fresh citation.

21. For the foregoing reasons, I find the notice of motion application dated 8th March 2023 entirely misconceived. Thus, it is hereby dismissed with orders that parties bear their own costs.

RULING DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 5TH DAY OF DECEMBER 2024.

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C. KARIUKI

JUDGE

