



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 2602 OF 2014

IN THE MATTER OF THE ESTATE OF NAOMI WANJIRU CHEGE (DECEASED)

TONY KAMAU.....APPLICANT

VERSUS

ELIZABETH WANJIKU CHEGE.....2ND APPLICANT

HELLEN NJERI CHEGE.....3RD APPLICANT

SIMON KIMANI CHEGE.....4TH APPLICANT

RULING

1. The deceased Naomi Wanjiru Chege died intestate on 12th July 2014 at Nairobi. Her only estate was Plot No. 760 Huruma Fire Victims. Her beneficiaries were her children Elizabeth Wanjiku Chege, Hellen Njeri Chege, Simon Kimani Chege, Peter Chege and Tony Kamau and her granddaughter Saima Ituma. A joint grant of letters of administration of administration was issued to Elizabeth Wanjiku Chege, Hellen Njeri Chege and Simon Kimani Chege on 9th May 2018. These are the respondents in the instant application. On 5th Mach 2019 they filed an application to have the grant confirmed. Peter Chege filed an affidavit in protest. So did Tony Kamau. The application has not been heard.

2. Peter Chege died on 6th August 2020. He did not leave a wife or a child. Tony Kamau (the applicant) filed the present application seeking to substitute the late peter Chege to be able to benefit from what was due to him in the estate, to be able to take over and prosecute the protest that he (Peter Chege) had filed and to be able to sue on behalf of his estate.

3. The application was opposed by the 3rd respondent who filed a replying affidavit. His case was that now that Peter Chege had died leaving no beneficiary, all his brothers and sisters were entitled to share what was due to him. As to whether the applicant could take over the protest of Peter Chege or be allowed to sue on behalf of his estate, the 3rd respondent's response was that the applicant had not obtained letters of administration *ad litem* to sue on his behalf.

4. In my view, this is a simple application to determine. Peter Chege appears to have died intestate. Now that he was entitled to benefit from the estate of his deceased mother, and he did not leave a surviving wife or child, his entitlement will be shared equally by his surviving siblings. This is what **section 39(1)(c)** as the **Law of Succession Act (Cap.160)** says. The applicant does not have to bring any cause over that. Secondly, the applicant has already filed a protest to the application for confirmation. He is at liberty, within 14 days from today, to file a further affidavit if he wants to raise the issues that his late brother had raised in his protest.

5. Lastly, and more important, under **section 82** of the **Act** it is only the personal representative of a deceased who has the powers to enforce, by suit or otherwise, all causes of action which survive the deceased. In **section 3** of the **Act**, a personal representative –

“means the executor or administrator, as the case may be, of a deceased person.”

It is clear that the applicant has not been issued with a grant in respect of the estate of the late Peter Chege, and neither is he the executor of his Will.

6. Under **Order 24 rules 3 and 4** of the **Civil Procedure Rules**, the procedure to be followed in substitution of a deceased plaintiff or defendant has been provided. The court can upon application cause a legal representative of the deceased plaintiff or defendant to be made a party to the suit, and the party shall proceed with the suit (**In the Estate of Mukita Mvingo (Deceased) [2019]eKLR; Alexander Mutunga Wathome –v- Peter Lavu Tumbo & Another [2015]eKLR**).

7. In conclusion, I determine that the applicant's application has no merits. It is dismissed with costs.

DATED and DELIVERED electronically at NAIROBI this 8TH APRIL 2021.

A.O. MUCHELULE

JUDGE