



REPUBLIC OF KENYA



In re Estate of Abdalla Salimin Bates (Deceased) (Succession Cause E019 of 2021) [2021] KEHC 9771 (KLR) (5 November 2021) (Ruling)

Neutral citation: [2021] KEHC 9771 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE E019 OF 2021
JN ONYIEGO, J
NOVEMBER 5, 2021**

IN THE MATTER OF THE ESTATE OF ABDALLA SALIMIN BATES (DECEASED)

RULING

1. The applicant herein has moved to this court vide a summons dated 7th June, 2021 and filed on 9th June, 2021 seeking the appointment of the public trustee as the administrator of the estate of Abdalla Salimin Bates (deceased). The application is supported by an affidavit sworn on 7th June, 2021 by the applicant.
2. It is the applicant's claim that for the last 16 years, he has been engaged in a land dispute with one Abdalla Salimin Bates now deceased over a parcel of land known as CR. 28499/1 being Sub-division of LR. 6473/I/MN Section one Main land North. That vide Mombasa HCC No. 254. 2005 (O.S), the said Abdalla filed a suit against him claiming the suit property on account of adverse possession a claim which he lost.
3. That despite the dismissal of the said suit, the said Abdalla refused to vacate thus necessitating his filing of Mombasa HCC 606/2001 for vacant possession and a permanent injunction.
4. He stated that during the pendency of the said suit, Abdalla died hence the suit got stuck as there was nobody to defend the same. That the deceased's children are reluctant to take out a grant of letters of administration so as to be substituted in place of their father (defendant) hence the prayer for the appointment of the public trustee to represent the estate.
5. When the application came up for hearing, counsel for the applicant indicated that he had served the public trustee who had not filed any response and therefore proceeded *ex parte*. After perusing the court record, I note that there is no return of service indicating that hearing notice was duly served. That notwithstanding, this court can proceed and determine the application which is not opposed.
6. It is trite that the fact that an application is not opposed does not mean that it will automatically succeed. See *Gideon Sitelu Koncbellah Vs Julius Lekakeny Old Sunkuli and 2 others* (2018) e KLR.



7. The application herein has been filed under Section 56 (2) 65,66 (2) and 101 of the Law of Succession Act and *rules* 14 and 16 of the 15th schedule and Section 7 of the Public trustee Act.
8. It is trite law that, before a party is appointed as an administrator, whether public trustee or not, there are preliminary procedures which must be followed inter alia; filing of a petition for a full grant or a grant of letters of administration Ad litem if the objective is for institution or defending a suit. After filing a petition for a full grant, there is the gazettelement and then issuance of the grant pending confirmation after six months.
9. In the event of failure to those in priority entitled to petition for a grant, then a citation can issue prompting them to show cause why they should not petition for the same in default somebody else to do so.
10. In the instant case, no citation has been issued to lay a ground for petitioning for a full grant. How then does the public trustee come in in situations where those entitled in priority refusing to take up the grant; Section 46 of the Law of Succession Act provides the procedure for reporting to the public trustee of the death of somebody pursuant to section 6 of the Public Act.
11. Section 6 (2) of the Public Trustee Act provides that once a report over death of a some person has been made, the public trustee may apply under the Law of Succession to a court for a grant of representation and the court shall except for good reason or cause shown make a grant of representation to the public trustee.
12. Under section 7 of the public trustee, the court must be moved by the public trustee after carrying out inquiries regarding the death of a deceased person pursuant to section 6 of the said Act. I do not think the procedure adopted in this application is the correct one. There has to be proof that the public trustee has been prompted to act under the public trustee Act and Section 46 of the Law of Succession Act before a court can exercise its discretion to appoint the public trustee.
13. The applicant must exhaust the procedures laid down including issuance of a citation if found appropriate so as to prompt the close relatives of the deceased and then the public trustee. For the stated reasons, the application herein is disallowed with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 5TH DAY OF NOVEMBER 2021

J. N. ONYIEGO

JUDGE

