



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Margaret Gathoni Ngugi (Deceased) (Succession Cause E005 of 2025) [2025] KEHC 15580 (KLR) (27 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15580 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE E005 OF 2025
G MUTAI, J
OCTOBER 27, 2025**

BETWEEN

ROSELYN WANJIRU NGUGI CITOR

AND

JOHN MUTURA NGUGI 1ST CITEE

SUSAN WANJA MUTURA 2ND CITEE

RULING

1. The citor and the citees are the children of Margaret Gathoni Ngugi. The deceased died on 18th February 2003. Her last known place of residence was Majengo in Mtwapa, Kilifi County. The citor avers that the citees have refused to take out letters of administration intestate of the estate of the deceased and would like the citees to indicate whether they accept or refuse letters of administration intestate, or to show cause why letters shouldn't be issued to the citor.
2. From the documents filed in court, it is evident that the citations were served on the citees by email by the advocate for the citor.
3. The 1st citee deposed to a replying affidavit sworn on 7th April 2025, in which he denied that the deceased had any registered assets. He stated that she only had a claim to a 3-acre parcel of land in Kanamai in Kilifi, which squatters had invaded. He accused the citor of being a person of a bossy character, very temperamental, and of filing a case against them in Mombasa ELC No. E306 of 2024, Roselyn Wanjiru Ngugi v John Mutura Ngugi, Audrey Kesa, Jewel Misiko Simba, and Kimbely Simba.
4. The foregoing notwithstanding, the 1st citee proposed, despite seeking to have the citation dismissed, that in the alternative, a grant be issued to him and the citor.
5. In a response, the citor deposed that the suit referred to by the 1st citee was for a claim for material damage and was not a succession cause. She accused the citees of making contradictory claims. Ms



Roselyn Ngugi opposed the proposed joint administration, claiming that the 1st citee had no interest in processing the succession proceedings. She contended that the estate of the deceased had a 20-acre claim in respect of Title No. MN/Section IV/309.

6. In a further supplementary affidavit sworn on 13th June 2025, the citor averred that the deceased had other assets which the 1st citee had not disclosed.
7. The application proceeded by way of written submissions. Although both parties were granted the liberty to file written submissions, only the citor did so. The submissions of the citor are dated 22nd July 2025. The citees, on the other hand, averred through their lawyer, Mr David Sewe, that there was nothing to administer. This very categorical statement was made on 20th May and 1st July 2025.
8. In her submissions, filed by her counsel, the citor identified 3 issues, to wit:-
 - a. Whether the deceased left an estate capable of administration;
 - b. Whether the citor is entitled to apply for a grant;
 - c. Whether the citees have failed, neglected, or refused to act.
9. In respect of the 1st question, it was averred that the deceased had a property which, though not in her name, was within her power to dispose of and which remained intact even after her death. Reliance was placed on the case of re Estate of Job Ndunda Muthike (Deceased) [2018] eKLR. It was urged that the house in which the 1st citee resides is situated on land belonging to the deceased. Although the land was registered in the name of their deceased uncle's estate, a trust was in their favour.
10. It was urged that the citees did nothing to administer the estate of the deceased. This forced the citor to take out the citation proceedings. It was submitted that no consent is required prior to the filing of a citation, as the said proceedings are aimed at compelling a party to do that which he has refused to do.
11. It was urged that the citees had not taken any step to administer the estate. The delay threatened the estate's interests and was harmful.
12. I have considered the citation, affidavits in support of the citation sworn by the citor, as well as the replying affidavit of the 1st citee. I have also taken into account the submissions made by the counsel for the citor and the statement of Mr Sewe, learned counsel for the citees, that there was no estate to administer.
13. There is no doubt that the deceased had four children, one of whom is deceased. It is clear that the citees have no interest in managing the estate, as it is, in their view, non-existent. That notwithstanding, the 1st citee appears to be in occupation of a house erected on the land said to belong to the deceased. I note there is no clarity regarding the current status of the cases pending in court.
14. Given the conduct of the citees, it is clear that they are not interested in filing a petition for letters of administration intestate. This reluctance on the part of persons entitled to file a petition for letters of administration intestate is the reason why rules 21 and 22 of the Probate & Administration Rule, 1980, exist. They are there to ensure that the people entitled to take out letters can be compelled to do so. I do not agree that consent is required in such circumstances.
15. In re the Estate of Josiah Muli Wambua - Deceased [2014] KEHC 8172 (KLR) W Musyoka, J stated as follows: -

“In intestacy, citations issue only in cases where no petition has been lodged in court. Citations are intended to trigger the process of applying for letters of administration



intestate in circumstances where the persons entitled to apply are not willing or are slow in moving the court in that behalf. The citor should not be a person who has himself already applied for the grant, for the citor should only apply for grant after the citee fails to so apply.”

16. Although the deceased died in 2003, the citees have taken no action. The delay is inexcusable. Delay threatens the integrity of the estate, and the citor cannot be bound to wait for the reluctant citees to protect the estate’s interests.
17. This court is of the view that the citees’ advocate’s categorical statement that there is no estate to administer, for all intents and purposes, amounts to a renunciation of the right to petition for the grant. It is clear that they see no reason to administer the deceased’s estate.
18. In the circumstances, this court is of the view that the citor should take out a petition for letters of administration intestate of the estate of their late mother. I issue the said order in exercise of my discretion under section 66 of the Law of Succession Act, which provides as follows:-

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a 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 on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- c. the Public Trustee; and
- d. creditors:

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. I order that the citor file the petition for letters of administration intestate within 30 days from the date hereof. Such a course of action won’t prejudice the Citees in any way, as they do not believe that there is an estate to administer.
20. As this is a citation between close family members, each party shall bear own costs.
21. It is so ordered.

DATED AND SIGNED IN MOMBASA, THIS 27TH DAY OF OCTOBER 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Mr Gitahi Gathu for the Citor (absent);

Mr Sewe, for the Citees (absent); and

Arthur - Court Assistant.

