



In re Estate of James Charles Nakhwanga Osogo (Deceased) (Succession Cause E218 of 2025) [2025] KEHC 15074 (KLR) (Family) (15 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15074 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E218 OF 2025
CJ KENDAGOR, J
OCTOBER 15, 2025
IN THE MATTER OF THE ESTATE OF JAMES CHARLES NAKHWANGA OSOGO**

BETWEEN

ARMSTRONG FRED KASUKU CITOR

AND

MARIE ELIZABETH NAKHUBALI OSOGO 1ST CITEE

STEPHEN JOSEPH OSOGO 2ND CITEE

JOHN FITZGERALD OSOGO 3RD CITEE

PATRICK OSOGO ALIAS OMAR OSOGO 4TH CITEE

PAUL RICHARD OSOGO 5TH CITEE

TEOFANO IVY OSOGO 6TH CITEE

JOAN NABWIRE OSOGO 7TH CITEE

NELLIE BRIGETTE OWINO AYODO 8TH CITEE

RULING

1. This file relates to James Charles Nakhwanga Osogo, who died on 15th August, 2023.
2. The background of the case is that on 13th March, 2025, the Citor - Armstrong Fred Kasuku moved this Court, citing Marie Elizabeth Nakhubali Osogo (deceased's widow) and Stephen Joseph Osogo, John Fitzgerald Osogo, Patrick Osogo Alias Omar Osogo, Paul Richard Osogo, Teofano Ivy Osogo, Joan Nabwire Osogo, Nellie Brigette Owino Ayodo (deceased's children) (hereinafter referred to as the Citees).



3. The Citor, in the Affidavit in Support, pleaded that he is a Plaintiff in Nairobi Environment and Land Court (ELC) Case No. 40 of 2014 and a Creditor to the Estate. The ELC Case is between the Citor and the deceased and two others – Armstrong Fred Kasuku vs James Charles Nakhwanga, Marie Elizabeth Nakhubali Osogo & Khokeri Holdings Limited.
4. The Citees were served.
5. On 6th October, 2025, Counsel for the Citor and Counsel for the Citees attended Court and informed the Court that succession proceedings had already commenced in the High Court at Nairobi, Milimani Family Division Succession Cause No. E737 of 2025, and therefore the citation was spent.
6. Counsel for the Citor asked that costs in the present file be awarded to them, while Counsel for the Citees opposed this. This Ruling is on who should bear the costs of the citation proceedings.
7. The Court has full discretion to determine who pays the costs. This discretion must be exercised judiciously.
8. Each case is decided on its own merits. The Court will consider the specific facts and circumstances of the citation and the subsequent probate filing before making a determination.
9. According to the Citor, he is entitled to the costs of this Citation because he acted diligently when he filed these proceedings after the Citees failed to take out letters of administration. The ELC case is stated to have come up in Court in February, 2024 and could not proceed because the issue of substitution had not been addressed.
10. The Citees petitioned for the Letters in P&A E737 of 2025 on 15th September 2025. The Court presumes that this was after they were in receipt of the Citation herein, as the only document in this file from their end is their communication to the Citor's Counsel dated 29th September, 2025, confirming that the Succession Proceedings had been initiated.
11. The Citees argue that, although they were aware of the ELC Proceedings, the beneficiaries were in the process of regularizing the probate and stated that it took longer because there are many beneficiaries and seeking concurrence is a challenge.
12. The 1st (widow) is a party to the ELC Proceedings and is also the 2nd Petitioner in the Probate matter. The Court duly notes, therefore, that she was aware of the ELC proceedings, a fact acknowledged by Citees' Counsel as well.
13. The period between February ,2024 and when the Citation was filed in March, 2025 is slightly over a year. The Citees' inaction unnecessarily extended the legal process in the ELC matter. While the Court also notes the feedback regarding seeking concurrence among the beneficiaries, it also observes that the deceased left a written will. Therefore, the defendant should have communicated with the plaintiff after the last attendance about the actions to be taken, rather than leaving them in limbo, causing delay and imminent fear that the suit would abate against the deceased defendant.
14. I have considered the conduct of the parties, the subject of litigation before the ELC Court, and the circumstances which led to the institution of the Citation, and I find in favour of the Citor.
15. Consequently, the Costs of the Citation are awarded to the Citor, to be borne by the Estate.
16. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 15TH DAY OF OCTOBER, 2025.



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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

