



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Alfred Mwai Ngenye (Deceased) (Succession Cause
190 of 2004) [2025] KEHC 1660 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1660 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 190 OF 2004
MA ODERO, J
FEBRUARY 28, 2025**

RULING

1. Before this court for determination is the Summons dated 7th August 2023 by which the Applicant James Mbui Mwai seeks the following orders:-
 - “ 1. That this Honourable court be pleased to substitute the name of the deceased petitioner herein Rebeca Wamathai Mwai with that of James Mbui Mwai in these proceedings.
 2. That this Honourable court be pleased to set aside the orders of this Honourable court issued on 6th June 2017, revoking the grant herein and reinstate the grant.
 3. That this Honourable court be pleased to thereafter appoint James Mbui Mwai as an administrator herein in place of his deceased mother Rebeca Wamathai Mwai.”
 4. That the grant so issued in prayer 3 above be confirmed notwithstanding the lapse of six (6) months.
 5. That cost of this application be in the cause.”
2. The application which was premised upon Rule 49 and 73 of the Probate and Administration Rules and all other enabling provisions of the law was supported by the Affidavit of even date sworn by the Applicant.
3. The Respondent Paul Maina Njege opposed the application through his Replying Affidavit dated 4th November 2024.
4. The application was canvassed by way of written submissions. The applicant filed the written submissions dated 6th November 2024 whilst the Respondent relied upon his written submissions dated 4th December 2024.



Background

5. This Succession Cause relates to the estate of the late Alfred Mwai Ngenye (hereinafter the Deceased) who died intestate on 19th June 2001. A copy of the Death Certificate Serial No. 654078 was filed in Court on 29th April 2004.
6. Following the demise of the Deceased his widow Rebecca Wamathai Mwaifiled a petition for Grant of letters of Administration Intestate. An objection to the making of a Grant was raised by her daughter Eunice Wanjiku Mwai.
7. The matter remained active for the next thirteen (13) years. The Objector eventually passed away on 21st May 2015 and the Petitioner thereafter died in the year 2017.
8. Due to lack of activity in the Succession Cause, the Court dismissed the matter on 16th June 2017. The Applicant herein who is the son of the Original Petitioner has now filed this application seeking to have the matter reinstated and seeking to be appointed as Administrator in place of his late mother.
9. The Respondent on his part states that he holds a Grant of Administration to the estate of the Deceased, which Grant was issued to him on 22nd October 2024 in Mukurweini Succession Cause No. 109 of 2023.
10. The Respondent therefore opposes the application to reinstate the previous succession cause on grounds that there cannot be two matters relating to the same estate running in two different courts.

Analysis And Determination

11. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties.
12. This is a succession cause and in any succession cause the duty of the court is to facilitate and direct the distribution of the estate to the genuine heirs.
13. The Applicant has prayed to have the succession cause filed in the High Court reinstated. The Respondent states that he already holds a grant to the estate of the Deceased, issued to him by the Mukurweini Magistrates Court.
14. Neither the *Law of Succession Act* nor the Probate and Administration Rules provide for the reinstatement of dismissed suits. As such, the provisions of Order 12 Rule 6 of the Civil Procedure Rules 2010 will be relied on. The same provide thus:-
 6. Effect of dismissal [Order 12, rule 6]
 - (1) Subject to subrule (2) and to any law of limitation of actions, where a suit is dismissed under this Order the plaintiff may bring a fresh suit or may apply to the court to reinstate the suit.
 - (2) When a suit has been dismissed under rule 3 no fresh suit may be brought in respect of the same cause of action.
15. The key question is who between the Applicant and the Respondent has locus standi in this succession cause. The term ‘Locus Standi’ is a latin phrase which literally means “place of standing”. It refers to the right of a party to litigate in a particular matter.



16. In any succession cause the parties who would have proper locus standi are the genuine heirs/beneficiaries to the estate. The Applicant herein is a son to the Deceased. In the chiefs letter dated 9th March 2004 the Applicant James Mbui Mwai is named as a son of the Deceased. Likewise in the Affidavit in Support of the Petition dated 29th April 2004 the Applicant is named as one of the persons who survived the Deceased.
17. On the other hand the Respondent Paul Maina Njege who obtained a Grant to the estate at the Mukurweini Law Courts is not related to the Deceased in any manner whatsoever. In his Petition dated 29th September 2023, the Respondent describes himself as a –‘Purchaser’ A ‘purchaser’ is not an heir or beneficiary to the estate. As such the Respondent being a purchaser does not have locus standi in this succession cause.
18. The obvious question that arises is who has the right to apply to administer the estate of a Deceased Person. Section 66 of the Law of Succession Act sets out the Order of priority to be applied in issuing letters of Administration to an estate as follows:-
- “When a deceased has died intestate the court shall serve 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 interest 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. From a clear reading Section 66 provides that in cases where a Deceased dies intestate, priority in granting letters of Administration will go to the surviving spouse or spouses and the children of the Deceased.
20. Based on the above it is my finding that the Respondent not being a beneficiary to the estate and not ranking in priority to the children of the Deceased who are still alive has no locus standi in this matter. The Respondent has not claimed to have been a dependant of the Deceased in terms of Section 29 of the Law of Succession Act.
21. Therefore if the Respondent has any claim against the estate then he can only come in as a creditor. Similarly if the Respondent claims any land belonging to the estate as his, then he must file a suit in the Environment and Land Court. The Respondent cannot purport to protect his claim by taking out letters of administration in respect of an estate in which he has no interest.
22. Additionally I have called for and perused Mukurweini Succession Cause No. 109 of 2023 wherein the Respondent obtained letters of Administration on 22nd October 2024. There is no evidence that the Respondent served or in any other way notified the genuine beneficiaries of the Deceased of his petition. There is no Affidavit of Service to indicate that the petition was served on the beneficiaries.



23. From the record it is quite clear that the Respondent has been fully aware of the existence of the Succession Cause in the High Court since the year 2023. He did not alert the court in Mukurweini of the existence of the High Court matter. The Respondent filed his petition after this application seeking to reinstate the succession cause had been filed. It is clear that this was a mischievous act done deliberately to scuttle the High Court Succession Cause. The Respondent obtained the Grant by failing to disclose material information. As such the Grant issued to the Respondent is invalid and the same is hereby revoked under Section 76 of the [Law of Succession Act](#).
24. Regarding the application to reinstate this cause I am persuaded that this would serve the interests of justice. The family of Deceased to forward to this court within 14 days the name[s] of persons nominated for appointment as Administrator of the estate. Costs of this application be met by the Respondent.

DATED IN NYERI THIS 28TH OF FEBRUARY 2025

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MAUREEN A. ODERO

JUDGE

