



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Daniel Muna Gatete (Deceased) (Succession Cause  
E048 of 2023) [2025] KEHC 1110 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1110 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE E048 OF 2023  
PN GICHOHI, J  
FEBRUARY 26, 2025**

**IN THE MATTER OF THE ESTATE OF DANIEL MUNA GATETE (DECEASED)  
AND  
IN THE MATTER OF THE ESTATE OF DANIEL MUNA GATETE (DECEASED)  
AND  
CITATION TO ACCEPT OR REFUSE LETTERS OF ADMINISTRATION INTESTATE  
(RULE 21 OF THE PROBATE AND ADMINISTRATION RULES)**

**BETWEEN**

**ELIZABETH WANGARI MWANGI ..... CITOR**

**AND**

**ELVIS KINYUA MUNA ..... 1<sup>ST</sup> CITEE**

**OLIVIA NJOKI WAITHERA ..... 2<sup>ND</sup> CITEE**

**PAUL GATETE MUNA ..... 3<sup>RD</sup> CITEE**

**BEATRICE VENESSA MUTHONI MUNA ..... 4<sup>TH</sup> CITEE**

**RULING**

1. The background of this matter is that on 23<sup>rd</sup> March 2023, Elizabeth Wangari Mwangi filed a Citation dated 6<sup>th</sup> February 2023 against Elvis Kinyua Muna, Olivia Njoki Waithera, Paul Gatete Muna and Beatrice Venessa Muthoni Muna to accept or refuse letters of administration intestate in regard to the estate of the deceased herein, Daniel Muna Gatete who died on 14<sup>th</sup> January 2015 reason being that she intends to petition the Court for letters of administration intestate in their default.



2. In her Supporting Affidavit sworn on 6<sup>th</sup> February, 2023, she states that she was filing the citation in her capacity as the widow of the deceased. She deponed that the deceased was survived by two houses.
3. It is her case that from the 1<sup>st</sup> House, the deceased was survived by Elvis Kinyua Muna, Olivia Njoki Waithera, Paul Gatete Muna and Beatrice Venessa Muthoni Muna while the 2<sup>nd</sup> House was survived by the Citor (widow) and Maureen Diana Njeri (daughter) with whose authority she had moved this Court.
4. She stated that the children of the first house have refused to either petition the Court for letters of administration intestate jointly with her or alone so that the Estate of the deceased can be distributed to the beneficiaries thus necessitating this application.
5. The 1<sup>st</sup> Citee, Elvis Kinyua Muna, with the authority of the other Citees, filed his Replying Affidavit sworn on 19<sup>th</sup> July, 2023 and opposed the application stating that application herein is bad in law as it offends the provisions of Rule 22 of the Probate and Administration Rules, 1980.
6. He states that the Citor lacks locus standi to file and prosecute the instant application as she is a stranger to the Estate. He argues that the Citor is not a beneficiary, executor and/or creditor of the estate of the deceased herein.
7. He further states that there is no evidence tendered in support of the alleged marriage between the Citor and the deceased and that no evidence is tendered in support of the allegations that the Citor's daughter is child of the deceased.
8. The 1<sup>st</sup> citee further depones that his mother Nelly Wanjugu Muna (now also deceased) was married to the deceased herein in 1983. That prior to that marriage, his mother had him and Olivia Njoki Waitha, who were soon thereafter adopted customarily by the deceased herein and issued with birth certificate in the name of the deceased as their father. Subsequently, the deceased and her mother begot two other children being Paul Gatete Munah and Beatrice Vanessa Muthoni Muna (the 3<sup>rd</sup> and 4<sup>th</sup> Citees respectively).
9. He therefore contends that the chief's letter alleging that the Citor is the wife of the deceased is marred with fraud and that the Citor and the Chief colluded to issue the said letter in disregard to Section 45 of the *Law of Succession Act*.
10. In a rejoinder through a Supplementary Affidavit sworn by the Citor on 3<sup>rd</sup> June, 2024, she stated that she married the deceased in 1989 through customary marriage and out of the union, she was blessed with one child namely Maureen Diana Njeri, hence she is a widow and a beneficiary of the Estate of the deceased.
11. She stated that she was recognized as the wife of the deceased in his life time and during his funeral, she was included as his wife in the obituary and eulogy of the deceased. In support of her marriage to the Deceased, she attached several photographs showing her in the company of the deceased,
12. It is her position that before his demise, the deceased bequeath her a shop located in Plot No. 13/213 where she acquired a trade license in 2016 and has been operating the shop to date.
13. She further states that the deceased gave her a parcel of land known as Njoro/ Ngata Block 1/262 in 2014 to cultivate and that she has been cultivating until 2021.
14. In regard to the 1<sup>st</sup> Citee's allegation that she fraudulently obtained the Chief's letter, she clarified that the first Chief's letter was taken out by the 1<sup>st</sup> Citee together with her and her daughter but the 1<sup>st</sup>



Citee failed to petition the court within the required timelines causing her to take out fresh Chief's letter to cite them.

15. On contention on her child being the deceased child, the Citor stated that DNA of her daughter and that of Beatrice Venessa Muthoni Muna (daughter from the first family) was conducted in the USA on 22<sup>nd</sup> August, 2024 and showed their probability of relationship at 99.9889%.
16. On that basis, she concluded that she has demonstrated that she is the widow of the deceased and her daughter is a child of the deceased and thus, they are beneficiaries of his Estate.
17. On 6<sup>th</sup> November, 2024, the 1<sup>st</sup> Citee swore and filed a Further Affidavit reiterating his Replying Affidavit and denied that the Citor was the wife of their father and her daughter their sibling.

### **Citor's Submissions**

18. She submitted that she has established interest in the estate by virtue of being wife to the deceased having been married through Kikuyu customary marriage in 1989 and performed all rights of marriage and they lived together as husband and wife.
19. She argued that the obituary and photographs annexed in the Affidavit confirms that indeed she was married by the deceased as a second wife and that the deceased died in her presence as he received treatment. Further, the deceased's siblings recognised her as the widow of the deceased. In support, she cited *Re Estate of Cosmas Ikunyua M'Mbwiria (Deceased) (Succession Cause E893 of 2020) [2024] KEHC 2087 (KLR)*.
20. She further emphasised the averments in the affidavit by both parties and maintained that the deceased was survived by two houses and that the deceased was her daughter's father. While citing the provisions of Section 66 of the *Law of Succession Act*, she submitted that having been left as the surviving Widow of the deceased, it is in the interest of justice that she be allowed to take out the letters of administration in this matter. She urged this Court to allow the application with costs to her.

### **Citees' Submissions**

21. On issue of marriage between the deceased and the Citor, he submitted that the Citor failed to give evidence of such marriage as is required under Section 107 of the *Evidence Act*.
22. It was argued that none of the ingredients of a valid Kikuyu customary marriage was established. Regarding these ingredients, reliance was placed on the case of *Eva Naima Kaaka & Another Vs Tabitha Waithera Mararo [2018] eKLR*, where the Court of Appeal quoted Eugene Cotran's "Casebook on Kenya Customary Law" at page 30 that sets out the essentials of a Kikuyu Customary marriage being: -
  1. "Capacity; the parties must have capacity to marry and also the capacity to marry each other.
  2. Consent; the parties to the marriage and their respective families must consent to the union.
  3. Ngurario; no marriage is valid under Kikuyu customary law unless the Ngurario ram is slaughtered.
  4. Ruracio; there can be no valid marriage under Kikuyu law unless a part of the ruracio (dowry) has been paid.
  5. Commencement of cohabitation; the moment at which a man and a woman legally become husband and wife is when the man and woman commence cohabitation i.e. under the capture procedure when the marriage is consummated after the eight days' seclusion, and nowadays when the bride comes to the bride grooms' home".



23. In the circumstances, he submitted that there was no proof of the Citor and the deceased having gone through above stages of Kikuyu Customary marriage. Further, it was submitted that if indeed such a marriage occurred, then Sections 44 and 45 of the Marriage Act, requires the parties to notify the Registrar of Marriage within three months of completion of the ceremonies, while Section 55 of the Marriage Act requires such customary marriage to be registered.
24. It was further submitted that even if the said marriage occurred way before the enactment of the Marriage Act, the Citor was required under Section 96 (2) of the Marriage Act, Cap 150 to register the marriage within 6 months, which she failed.
25. On locus standi, the Citees argued that Section 66 of the Law of Succession Act list the persons in priority who may take out letter of administration for a deceased person's Estate and that Rule 22 of the Probate and Administration Rules requires that a person taking out citation should have an interest in the deceased Estate.
26. It was therefore submitted that having failed to prove marriage to the deceased, the Citor does not have any locus to file this Application. The Citees therefore urged this Court to dismiss the citation and order for payment of costs pursuant to Rule 69 of the Probate and Administration Rules.

### **Determination**

27. This Court has considered the detailed arguments by the parties herein but the main issue before this Court is whether the Citor has demonstrated sufficient interest in the Estate of the deceased herein to have locus standi to file this Citation.
28. The law on citations is set out in Part VI of the Probate and Administration Rules. Rules 21 to 23 apply to the instant matter. Rule 21 of the Probate and Administration Rules provides for citations generally.
29. Rule 22 (1), (4) & (5) (a) of the Probate and Administration Rules provides that: -

- “(1) A citation may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.  
(4) A person cited who is willing to accept or take a grant may petition the court for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application for a grant to himself.
- (5) If the time limited for appearance has expired and the person cited has not entered an appearance and that he has not been served by the citor with notice of any application for a grant to himself.
  - (a) In the case of a citation under subrule (1) petition the court (if he has not already done so) for a grant to himself.”

30. As to who is entitled to petition for grant of letter of administration, Section 66 of the Law of Succession Act provides that: -

“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.”

31. There is no dispute that the deceased died on 14<sup>th</sup> January 2015. The Citor’s statement is that the first chief’s letter was taken out by the 1<sup>st</sup> Citee together with her and her daughter but the 1<sup>st</sup> Citee failed to petition the court within the required timelines causing her to take out fresh chief’s letter to cite them.
32. In their pleadings, the Citees have not stated why they have not taken out Letters of Administration but simply attack the Citor’s letter from the Chief as being fraudulent.
33. As discerned from Rule 22 of the Probate and Administration Rules, an applicant in a citation is required to show that she has a bona fide interest in the estate of the deceased to prompt the respondent to action. The Citees on the other hand are required to file a substantive petition for grant of letter of administration, so that all the issues raised herein can be canvassed substantively.
34. Indeed, the Court of Appeal in *Imaet v Okodoi (Civil Appeal 66 of 2019)* [2024] KECA 1198 (KLR) stated: -

“...a Citation to accept or refuse a Grant is a method to attempt advancing the estate administration by forcing a party with a right to the Grant to act. As was held by the High Court in *Josiah Muli Wambua* [2014] eKLR:-“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.”
35. When the parties appeared before this Court Elvis Kinyua (1<sup>st</sup> Citee) told the Court that the Citees have never applied for letters of administration but he never stated why they have not done it.
36. What the Citees have concerned themselves with is the issue of alleged marriage between the deceased and the Citor. It was at that point that Mrs Mukira for the Citees told the Court that the Citees can take out letters of Administration and the Citor to raise an objection in regard to who the beneficiaries are as provided for by the *law of Succession Act*.
37. On his part, Mr. Mwangi for the Citor suggested that the Citor takes out Letters of Administration within 30 days as she ranks higher as a wife of the deceased and further stated that if the Citees wish to object then they can do so once the letters are filed.
38. It was disclosed to this Court that most of the properties in this estate are the subject of a dispute in Environment and Land Court being ELC No. 7 of 2022 but details of that case were not given. It was also disclosed by parties that Olivia and Venessa Muthoni are in the United States of America while Paul Gatete is in Dubai. In essence, the parties could not reach a consent for adoption by this Court in regard to who should take out the Letters of Administration.
39. From the foregoing, it is clear from the material before Court that the Citor has established sufficient interest in this estate. On the other hand, the Citees have not demonstrated willingness to apply for Grant of Letters of Administration despite being prompted by this Citation.
40. This Citation is clearly merited and it has served its purpose. In conclusion, the Citation is allowed in the following terms: -



1. The Citees be and are hereby ordered take out Letters of Administration to the estate of the deceased herein within the next thirty (30) days of this ruling.
2. In default, the Citor shall be at liberty to urgently take out Letters of Administration intestate to the estate of the deceased herein.
3. Cost to abide the outcome of the succession cause.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 26<sup>TH</sup> DAY OF FEBRUARY , 2025.**

**PATRICIA GICHOHI**

**JUDGE**

In the presence of:

Mr. Mwangi for Citor

Mr. Oyondi for Mrs. Mukira for Citees

Ruto, Court Assistant

