



REPUBLIC OF KENYA



In re Estate of the Late Nyahoro Mugu (Deceased) (Succession Cause 141 of 1987) [2025] KEHC 1722 (KLR) (25 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1722 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 141 OF 1987
HI ONG'UDI, J
FEBRUARY 25, 2025**

BETWEEN

WANYEKI NYAHORO PETITIONER

AND

DANIEL MAINA NYAHORO OBJECTOR

RULING

1. This ruling is in respect of the chamber summons dated 28th November 2023 where the objector/protector seeks the following orders;
 - i. Spent.
 - ii. That this honorable court do order the parties to give viva voce evidence for the purpose of revoking or annulling the confirmed grant made on the 2nd August 1987.
 - iii. The objector/protector be given fresh confirmed grant in place or exchange with the petitioner /administrator who has abused the process of this court for being fraudulent, failing to diligently proceed with the administration of the estate since 1987 and for failing to produce an inventory of the estate to the court within six (6) months from the date of confirmation.
 - iv. The application dated 16th January 2023 by the objector /protector be consolidated with this application and the same be heard together because they touch on the same substantive and similar congruent issues for the sake of saving the courts time.
 - v. The court be pleased to issue any other orders or directions that it deems just, fit and convenient for the sake of conclusive determination of all the issues in controversy between the parties,
 - vi. The administrator/petitioner be condemned/saddled to meet the costs of incidental to the two applications or as the court may optionally decide.



2. The said application is premised on the grounds on its face as well as the affidavit of the applicant sworn on even date. He deponed that the court record showed that a confirmed grant was issued on 2nd August 1987. Further, that he did not know anything about the lodging of the succession cause nor was he involved in the process of its proceedings up to the issuance of grant and confirmation of the same. That Stephen Mugu was a son of the second junior house which was given plot No. 417 of ten (10) acres thus, he deserves nothing in this succession cause.
3. He further deponed that the administrator and Stephen Mugu conspired to undermine and prejudice him by taking two (2) acres. That this court has jurisdiction to deal with this matter conclusively though the administrator had confusingly and irrationally argued that this action be dismissed on the ground that the ELC suit was dismissed.
4. In response to the application, the petitioner filed a replying affidavit dated 8th May 2024. He averred that on 30th April 2019 Justice A.K Ndungu (J) stated in writing that the issues raised by the objector in this cause were not a subject matter of the deceased's estate and they would be best addressed in Nakuru E.L.C No; 266 of 2014 (Daniel Maina Nyahoro Vs Wanyeki Nyahoro). That on 20th September 2022, the said suit was dismissed for want of prosecution.
5. Further, that by a notice of motion dated 16th January 2023, the plaintiff (the objector herein) filed an application in the already dismissed Nakuru ELC No: 266 of 2014 seeking to have the dismissal order of 29th September 2022 reviewed, set aside and the suit be restored for hearing but the same was also dismissed. In addition, Justice A. Mshila stated that the matter was no longer a succession matter as distribution was already effected. Thus, the current application was inept and misconceived.
6. The application was canvassed by way of written submissions.

Objector/Protestor's submissions

7. These were filed by Lawrence Mwangi & Mwangi Advocates and are dated 15th October, 2024. Counsel gave a brief background of the case and submitted that the court should take judicial notice of how land conflicts were emotive. He urged the court to allow the application being guided by Article 159 of [the Constitution](#) 2010, sections 29, 35, 36,38, 40, 45 and 76 of the [Law of Succession Act](#) and the decisions in [Re estate of Prisca Ong'ayo Nande \(deceased\)](#) [2020] eKLR and [Mutuma Muriungi v C.E.O Kenya Police Sacco & Another](#) [2016] eKLR

Petitioner's submissions

8. These were filed by Karanja-Mbugua & Company Advocates and are dated 11th November, 2024. Counsel submitted that the petition in this cause was filed on 21st August 1987. Thus, a certificate of confirmation of grant could not have been issued on 2nd August 1987 long before the petition was presented in court as claimed. Further, that no grant of letters of administration intestate has ever been issued in this cause and no copy of the grant and or the certificate of confirmation of the grant was annexed to the applicants' affidavit. Thus, there was nothing to revoke. He added that this cause had never been published in the official Kenya Gazette as provided for under section 67 of the [Law of Succession Act](#) and Rule 7 (4) of the [Probate and Administration Rules](#). He urged the court to dismiss the applicant's application with costs to the petitioner.



Analysis and determination

9. I have considered the application, the affidavits and the submissions by the parties and I find the main issue falling for determination to be whether the chamber summons dated 28th November 2023 is merited.
10. The objector/protestor in his application seeks among other orders that there be revocation or annulling of the confirmed grant made on the 2nd August 1987. On his part, the petitioner argued that that no grant of letters of administration intestate has ever been issued in this cause hence there was nothing to be revoked.
11. Having carefully gone through the court record I note that there is no such grant issued on 2nd August 1987 or any other date as alleged by the objector/protestor/applicant. No proof of the same was annexed in the affidavit in support of the application. Clearly as argued by the petitioner, there is no grant in this succession cause.
12. It is true this succession cause was filed on 21st August, 1987. A perusal of the record shows that the petitioner did not file any letter from the administration to confirm where the deceased hailed from and if he had any beneficiaries.
13. The record further shows that there was no gazettelement of this succession cause and therefore no grant was issued nor confirmed as claimed by the protestor/objector/applicant.
14. What is in the file are application after application by the applicant Daniel Maina Nyahoro which have born no fruits. At one point the court (Mshila J) on 17th July, 2014 directed the Applicant to go to the ELC for a resolution of his issues as this matter was no longer a succession cause as distribution had been effected. This has never been set aside. When he failed at the ELC the applicant returned to pursue this succession cause.
15. The above being the position I find that the orders sought in the application dated 28th November, 2023 cannot be granted in view of the fact that no grant has ever
16. been issued nor confirmed in this cause. This court cannot issue orders in vain as granting the orders sought would be futile and a pure academic exercise.
17. Finally, the succession cause herein having been filed on 21st August 1987 with no action taken by the petitioner to date thirty seven (37) years down the line amounts to nothing but an abuse of the court process.

Orders:

- i. The application dated 28th November, 2023 lacks merit and is dismissed.
- ii. The petition filed on 21st August, 1987 is dismissed for want of prosecution and file marked as closed.
- iii. Each party to bear his own costs.

Orders accordingly.

DELIVERED, VIRTUALLY, DATED AND SIGNED THIS 25TH DAY OF FEBRUARY, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI



JUDGE

