



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Peter Muia Ndunda (Deceased) (Succession Cause
18 of 2019) [2024] KEHC 1749 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1749 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 18 OF 2019**

MW MUIGAI, J

FEBRUARY 22, 2024

IN THE MATTER OF THE ESTATE OF PETER MUIA NDUNDA (DECEASED)

BETWEEN

ZUENA NGANDO KABABU OBJECTOR

AND

LITHER PETER MUIA 1ST PETITIONER

ROSE PETER MUIA 2ND PETITIONER

RULING

Background

1. Vide the Ruling dated 6th October, 2022 this Court directed and appointed administrators in line with Section 66 *LSA* and in compliance with Court of Appeal decision to issue letters of administration which entail agreement or appointment of administrators in an intestate estate and ordered that:
 - a. A fresh grant of letters of administration is issued to Lither Peter Muia, Rose Peter Muia and Zuena Ngando Kababu.
 - b. Upon the issuance of the fresh grant to Lither Peter Muia, Rose Peter Muia and Zuena Ngando Kababu they shall gather and collect assets that comprise of the estate of the deceased.
 - c. The Administrators shall meet discuss and/or agree on the proposed mode of distribution amongst all beneficiaries as outlined by the Court of Appeal decision and obtain consents.
 - d. The Administrators shall file and serve Summons for Confirmation of Grant together with a joint Schedule of Distribution of the assets of the deceased within 6 months from the date hereof.
 - e. Any aggrieved party by the Summons for confirmation may file Protests.



- f. The parties being family members there shall be no orders as to costs.

Certificate of Urgency Dated 18th November, 2023

2. The Objector/Applicant filed summons and sought the following orders:
1. Spent
 2. Spent
 3. That this Court restrains the Respondent together with their servants, agents or any other person whomsoever from interfering in any way or intermeddling with the deceased's assets comprising of Machakos Town/Block 1/94, Muputi Kiima Kimwe/2751, Machakos Town 11/247, Machakos Block 1/269 & Machakos Block 11/78 pending interpartes hearing of this suit.
 4. That this Court order a release of Kshs.150,000/- per month from monies collected as rent from Machakos Town/block 1/94, Muputi Kiima Kimwe/2751, Machakos Town 11/247, Machakos Block 1/269 & Machakos Block 11/78 for treatment and upkeep purposes pending hearing of this suit.
 5. That this Court orders a preservation of all the properties of the estate of the late Peter Muia Ndunda.
 6. That the costs of this application be paid for by the Respondents.
3. The application is based on the following grounds inter alia; that the Applicant is one of the widows of the deceased herein; that the marital status of the deceased was duly confirmed in the judgment of the Court of Appeal in Civil Appeal No. 10 of 2017; that the deceased died on 21/05/2004 having several rental assets which include inter alia the following Machakos Town/Block 1/94, Muputi Kiima Kimwe/2751, Machakos Town 11/247, Machakos Block 1/269 & Machakos Block 11/78 which attract an income every month; that the applicant is over 90 years old and has been sick over a period of time and is unable to meet medical expenses and requires at least Kshs.150,000/- monthly to cater for her medical expenses, livelihood and upkeep and that the Petitioner's will not suffer any prejudice if this application is allowed.

NOTICE OF MOTION DATED 15th MARCH, 2023

4. The Petitioners/Applicant filed an application seeking the following orders:
1. Spent
 2. That this Court grants leave to the Applicant to Appeal again the Ruling delivered by this Court on 6/10/2022.
 3. That upon the granting of the leave the Notice of Appeal be deemed as duly filed.
 4. That the costs of this application be provided for.
5. The application is based on the following grounds inter alia: that the Ruling sought to be appealed against was delivered by this Court on 6/10/2022 in the absence of both Counsels for the Applicant and the Objectors; that the Applicant being dissatisfied with the Ruling thereto instructed their Advocates on record to file an appeal against the aforementioned Ruling and which appeal shall lie at the Court of Appeal; that the draft notice of Appeal has been duly prepared but the same cannot be filed as at this time because leave to appeal is required from this Court of the first instance; that the



Appeal has weighty grounds which merit further serious judicial consideration and/or interrogation of the Appellate Court and which interrogation can only be achieved once leave of this Court is granted.

Replying Affidavit Sworn on 2nd May, 2023

6. That the aforementioned application dated 18th November, 2022 is frivolous, vexatious, an abuse of Court process, lacks merit and the same ought to be dismissed on the outset.
7. That the grounds set out in the application and the facts stated in the supporting affidavit of Zuena Ngando Kababu do not warrant the grant of the sought orders on the application.
8. That there is no evidence tendered by the Applicant herein of any income collected by the Respondents to warrants prayer No.4 on the face of the summons dated 18/11/2022.

Objector's Submissions:

9. The Objector raised 2 issues for determination
 - a. Whether the application for leave out of time is merited
 - b. Whether the Objector's application is merited
10. On the issue of whether the application for leave out of time is merited the Application was filed on 15/03/2023 whilst the ruling was delivered on 6/10/2022 which was 6 months after the ruling was delivered. The Applicants did not demonstrate any ground to invoke the powers of this Court and the Court of Appeal has no jurisdiction to hear the matter at all. The Petitioners application dated 15/03/2023 has no merits and is an abuse of the Court process and should be dismissed with costs.
11. On the issue of Whether the Objector's application is merited

The Objector filed an application dated 18th November, 2022 to be given about kshs.150,000/- to cater for her needs which included medical expenses and for restraining orders against the Petitioners who have kept her and her children from enjoying the proceeds of the estate in form of rent collections and the sale of some assets of the deceased estate even before confirmation of grant. It is submitted that the Objector herein is a wife to the deceased and therefore she is entitled to a share of the estate which includes upkeep and medical expenses. The Objector should be allowed as she continues to suffer in silence when the estate is in a position to support her welfare and medical expenses and it is only fair that she be given the money she is asking for to cater for these needs.

1st & 2nd Administrators Submissions

12. On the behalf of the Administrators it is submitted that there is no evidence tendered to show that the alleged rent is collected or even he subject properties form part of the estate.
13. Reliance is made in the Court of Appeal case of *Peter Wabome Kimotho v Josephine Mwiyeria Mwanu* [2014] eKLR



Back Ground

Court of Appeal

14. The Court of Appeal heard the appeal from this Court in Civil Appeal No.10 of 2017 Zuena Ngando Kababu vs. Lither Peter Muia & Rose Peter Muia and declared;

The upshot from the above is that there is merit in this Appeal which we hereby allow. Accordingly, the grant issued to the 1st and 2nd Respondents on 15th October, 2004 is hereby revoked. We further direct that this matter be referred back to the High Court for purposes of issuance of Letters of Administration and subsequent distribution of the deceased's estate to include the appellant and her children”

High Court Ruling 1

15. The Ruling delivered on 19th September, 2019 by Hon D.K Kemei J. while reiterating the Court of Appeal judgment held;

9. “..If this Court were to allow this prayer, it would be blessing a disregard to Section 51, 67 and 68 of the Law of Succession that provides for the procedure for applying for a Grant..... This then requires the parties herein to proceed and lodge the requisite application for letters of grant as directed.....Therefore I decline to grant the said prayer and advise the applicant to make formal application for grant as per the Law of Succession Act.”

16. Hon D. Kemei J. declined to grant the order and directed;

- a) The family do sit down and agree on the mode of distribution of the estate as well as the persons to be appointed as administrators of the estate.
- b. The parties after fulfilling (a) above do file a fresh application for grant in respect of the estate of the deceased.
- c. If no action is taken by the parties herein within the next sixty (60) days this Court will proceed to appoint the administrators so as to fast track this old matter.

High Court Ruling 2

17. Hon. D.K. Kemei J vide Ruling of 18/5/2021 observed;

6. I have seen the application dated 26/1/2021 filed by the Objector and note that in no way near the provisions of Section 51, 67 & 68 of Law of Succession Act on application for a grant. Section 51 of the Act provides that the Application for grant ought to be by way of a petition.

7. As it stands, there is no proper application for letters of administration in compliance with the law and with the Ruling delivered on 19/9/2019

18. The impugned Ruling of this Court of 6/10/2022 dismissed application for review of the above Clause 7 of Ruling of 18/5/2021 as the grounds for review were not complied with.

19. Secondly, this Court in light of Ruling of 19/9/2019 after 60 days had elapsed the Court was going to appoint administrators which this Court did in line with the Court of Appeal decision of 20/12/2017.



20. This Court did not sit on appeal of the decision of the previous Court as it is a Court of equal similar and competent jurisdiction as this Court and the Ruling of 19/9/2019 remains a valid regular and legal order of the Court as it was not appealed against.
21. This Court was also motivated to take steps to aid disposal of this matter having been in Court since 2004 and moved to the Court of Appeal whose orders are yet to be complied with to date almost 7 years later.
22. The Court relied on Article 159 2(b) of *Constitution* of Kenya that provides justice shall not be delayed and be done to all irrespective of status.
23. Section 1A CPA provides for the just, expeditious, proportionate and affordable resolution of civil disputes governed by the Act.
24. Section 1B CPA provides as duty of the Court to ensure just determination of proceedings efficient and timely disposal of proceedings.
25. Section 3A *CPA* provides for inherent power of the Court to make such orders as may be necessary for the ends of justice and/or to prevent abuse of the process of the Court.
26. Each/Any aggrieved party in proceedings is entitled to appeal decisions of the Trial Court on the laid down procedures.
27. However, in the instant case, the Court of Appeal delivered judgment on 20/12/2017 that revoked grant and included the Objector as widow of the deceased and the children as those of the deceased and to be included in the administration and distribution of the estate of the deceased.
28. This Court by hierarchy of Courts and judicial precedent is bound by the decision of the Court of Appeal and so are the parties herein.
29. Compliance of the said order has not been complied with to date as parties hold divergent views on the procedure to ensure enforcement and compliance of the instant Court of Appeal orders.
Article 159 2 (d) *Constitution* provides that justice shall be administered without undue regard to procedural technicalities.
30. Therefore, in good conscience this Court will not grant leave to appeal to the Court of Appeal whilst the Court of Appeal orders of 20/12/2017 have not been complied with yet we are all bound.

Disposition

The 2 Applications are hereby compromised as follows;

1. The Application for leave to appeal is not granted as Court of Appeal orders of 20/12/2017 have not been complied with.
2. The Application of 18/11/2022 is granted as pleaded in terms of b) & c) of the Application and this Court issues orders of preservation of the estate of the deceased under Section 45 *LSA* until hearing and/or determination of the matter.
3. The parties through respective Counsel explore means of complying with Court of Appeal orders; and may file relevant pleadings and serve before DR MHC; or
4. The Parties /Counsel may consider AJS/ADR dispute resolution mechanisms



5. The Parties/Counsel may discuss, agree and file Consent on administration and/or distribution of the estate with Deputy Registrar Machakos High Court to be adopted as an Order of the Court.
6. The matter be heard in any Court to expedite the conclusion of the matter in light of the advanced age of the Objector.

DELIVERED RULING SIGNED DATED IN OPEN COURT IN MACHAKOS ON 22ND FEBRUARY, 2024 (VIRTUAL/PHYSICAL CONFERENCE).

M.W. MUIGAI

JUDGE

IN THE PRESENCE OF:

No appearance for the Objector

MR Muema h/b Munyao for 1st & 2nd Administrator

Geoffrey/patrick - Court Assistant(s)

