



REPUBLIC OF KENYA



In re Estate of George Kabui Maina (Deceased) (Miscellaneous Succession Application E011 of 2023) [2024] KEHC 1633 (KLR) (22 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1633 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS SUCCESSION APPLICATION E011 OF 2023**

GL NZIOKA, J

FEBRUARY 22, 2024

IN THE MATTER OF

MAGDALENEMWIHAKI NJOROGE 1ST PETITIONER

JOSEPH MAINA KABUI 2ND PETITIONER

RULING

1. The application herein dated 4th August 2023 refers. The applicants are seeking for orders as reproduced verbatim here below: -
 - a. We present this petition in our capacity as the widow and father of the deceased.
 - b. That a grant of administration ad litem do issue limited for the purpose of prosecuting a civil suit for compensation and for recovery of damages arising out of an accident that occurred on 27th December 2022 and claimed the deceased's life.
 - c. That we have no powers to distribute the deceased's estate under this grant.
2. The application is supported by the affidavit sworn jointly by both applicants. The applicants aver that the deceased died on 27th December, 2022 and was survived by the following beneficiaries; Magdalene Mwihaki Njoroge, the wife, Joseph Maina Kabui, the father and Vieterina Wangui Maina, the mother.
3. That the applicants being interim administrators, are seeking for limited letters of administration to enable them file and prosecute a civil suit for recovery and compensation of general and special damages arising out of the accident that occurred on 27th December 2022, which claimed the deceased's life.
4. I note that the applicants have annexed to the affidavit in support of the application, a consent executed by Vieterina Wangui Maina, the deceased's death certificate and a letter from the Senior Principal Chief of Kirui Location, Murang'a County. Further a police abstract has been availed in proof of the fatal road traffic accident.



5. I have considered the application in light of the materials placed before the court and note that the letter of the Senior Principal Chief of Kirui Location, Murang'a County indicates that the deceased was residing within Murang'a County.
6. The provisions of section 47 of the [Law of Succession Act](#) (Cap 160) Laws of Kenya states as follows:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:

Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.
7. Further Rule & (3) of the [Probate and Administration Rules](#) provides that:
 - (3) The petition may be filed in the principal registry or a High Court district registry or, in the case of a deceased the gross value of whose estate does not exceed one hundred thousand shillings, in a resident magistrate's registry or, in the case of an application to the Resident Magistrate's Court under section 49 of the Act, in a resident magistrate's registry within the area of that court in which the deceased had his last known place of residence;
8. Pursuant to the aforesaid, this matter should have been filed at Murang'a High Court.
9. The police abstract issued at Naivasha Police Station confirms the accident occurred along Naivasha – Nakuru Road, and therefore any traffic case will be heard at Naivasha Chief Magistrate's Court. If any appeal arises therefrom, the matter will be heard at Naivasha High Court.
10. Further the affidavit herein has been sworn by the applicants jointly. It is my considered opinion that, each one of them should have sworn individual affidavits and/or authorized the other to swear on his or her behalf. However, I have still considered the affidavit.
11. Furthermore, the letter from the Chief does not recognize the parents of the deceased as surviving beneficiaries. Therefore, it is not clear whether they are or are not beneficiaries.
12. In the given circumstances the application herein cannot allowed due to want of jurisdiction and/or merit.
13. It is so ordered.

DATED, DELIVERED AND SIGNED THIS 22ND DAY OF FEBRUARY 2024.

GRACE L. NZIOKA

JUDGE

In the presence of:

Ms. Nyambura H/B for Mr. Mbigi for the petitioners

Ms. Ogutu: Court Assistant

