



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Harry Loius Nangurai (Deceased) (Succession Cause 207 of 2009) [2024] KEHC 6062 (KLR) (Family) (27 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6062 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 207 OF 2009
MA ODERO, J
MAY 27, 2024**

RULING

1. Before this court for determination is the Summons dated 22nd September, 2022 by which the Applicant/Beneficiary Tumpes Ole Meja Kisotu (suing as the Legal Representative and Administrator of the Estate of Meli Silanadi Nasololo) seeks the following orders:-
 - a. Spent.
 - b. The Honourable Court be pleased to grant leave to the Applicant to appeal out of time against the ruling made by the Honourable Court (Honourable Justice A. Muchelule) on 2nd December, 2021 in Milimani Succession Cause No. 207 of 2009.
 - c. The time limited for the applicant to file and serve the respondents with the notice of appeal be enlarged and/or extended to allow filing and service of the same within such time as the Honourable Court shall deem fit.
 - d. The Notice of Appeal annexed herein be deemed to have been properly filed before this Honourable Court upon payment of the requisite court fees.
 - e. Spent.
 - f. The costs of this application be in the intended appeal.”
2. The application which was premised upon Rules 49 and 67 of the Probate and Administration Rules, Section 7 of the *Appellate jurisdiction Act*, Cap 9, Laws of Kenya Order 50 Rule 6 of the *Civil Procedure Rules* and all enabling provisions of the law was supported by the Affidavit of even date sworn by the Applicant.
3. The 1st Respondent John P Nangurai opposed the application through the Replying Affidavit dated 24th February, 2023.



4. The 5th Respondent George M. Nangurai filed Grounds of opposition dated 7th February, 2023 whilst Catherine Queen Nangurai Onyango And Grace Tuhai (both beneficiaries to the estate) also filed Grounds of opposition dated 21st February, 2023.
5. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 30th May, 2023 whilst the Respondent relied on the written submissions dated 17th May, 2023.

Background

6. This is a very old succession case which relates to the estate of the late Harry Louis Nangurai who died intestate on 12th August, 1984.
7. There has been much litigation in this succession cause culminating in the issuance of a confirmed Grant, to John Ole Nangurai, Ruth Hellen Sempeyo Nangurai and Andrew Loice Nangurai as joint Administrators of the estate.
8. This certificate of confirmed Grant was issued to the three on 27th December, 2015 rectified on 2nd December, 2020 and rectified yet again on 8th February, 2023.
9. The genesis of this current application is the Ruling which was delivered on 2nd December, 2020 by Hon. Justice Muchelule (as he then was) In that Ruling the Hon. Judge allowed an application dated 8th April, 2020 substituting an earlier Deed of Settlement dated 30th July, 2013 with a Memorandum Recording Family Settlement dated 29th October, 2019.
10. The Applicant being aggrieved by that ruling purposed to appeal against the same and instructed the law firm of Lumumba & Lumumba Advocates to file the said appeal on his behalf.
11. However the said law firm took no action and thus the Appellant decided to appoint a new law firm M/s Wachira & Mumbi Advocates to act for him.
12. The Applicant avers that they and other beneficiaries are at risk of losing their rightful share of the estate of the Deceased as some of the beneficiaries have now commenced the process of transferring their shares to third parties.
13. The Applicant avers that his intended appeal is meritorious and states that time to file appeal has lapsed due to no fault of his own; He pleads that he be granted leave to appeal against the ruling of 2nd December, 2020 and that he be granted an extension of time within which to file the Appeal.
14. In opposing the application the 1st Respondent avers that the Applicant does not have the legal authority to represent the estate of the late Meli Silandi Nasololo. That the Applicant in any event has not been a participant in this succession cause.
15. The Applicant further states that vide a judgment delivered on 14th December, 2015, the late Meli Silandi Nasololo was not recognized as a beneficiary nor a dependant of the estate of the Deceased. To date that judgment has not been appealed against.
16. Finally the 1st Respondent submits that for Revocation of Grant dated 15th November, 2016 filed by the late Meli Silandi Nasololo is yet to be prosecuted. That it has been thirty eight (38) years since the Deceased died and this current application is frivolous and a waste of the courts time and therefore ought to be dismissed.
17. The 5th Respondent submits that all the family members and beneficiaries agreed to the Deed of Settlement dated 30th July, 2013. That all objectors were heard before Hon. Justice Muchelule (as he



then was) delivered his ruling. That the present application is misconceived, has no merit and ought to be dismissed.

18. Catherine Queen Nangurai Onyango and Grace Tukai submit that the High Court is now '*functus officio*' and has no jurisdiction to entertain this application.

Analysis And Determination

19. I have carefully considered this application, the replies filed thereto as well as the written submissions filed by the parties.
20. The Applicant was aggrieved by the decision in the Ruling of 2nd December, 2020. In his supporting Affidavit the Applicant describes himself as a beneficiary to the estate of the Deceased. This is not entirely correct and the Applicant has not explained his relationship to the Deceased nor has he explained how (if at all) he was a dependant of the Deceased; in terms of Section 29 of the [Law of Succession Act](#).
21. The Applicant is apparently bringing this application on behalf of the estate of the late Meli Silandi Nasololo who had claimed to be a wife of the Deceased. The said Meli Nasololo is now Deceased.
22. However this claim was dismissed vide a Judgment delivered by Hon. Justice Muchelule (as he then was) on 14th December, 2015. The court made a final decision regarding the identity of the beneficiaries of the estate. The said Meli Silandi Nasololo was not recognized as a beneficiary nor was she included in the distribution of the estate. As such the said Meli Silandi Nasololo and by extension the Applicant have no '*Locus Standi*' in this succession cause.
23. *Locus standi* is a latin term which literally means 'place of standing.' It refers to the right to an individual and/or party to appear in a particular case.
24. It is trite law that pleadings filed by a person who has no *Locus Standi* are void ab initio. In [Ibrahim v Hassan & Charles Kimenyi Macharia](#) [2009] eKLR it was stated as follows:-

“*Locus standi* is basically the right to appear or be heard in court or other proceedings. That means if one alleges the lack of the same in certain court proceedings, it means that party cannot be heard despite whether or not he has a case worth listening to. The issue herein is whether the Applicant lacks the requisite *Locus Standi* to seek relief from the court to revoke the grant in question issued to the Respondent. In my view issues regarding locus standi are critical preliminary issues which must be dealt with and settled before delving into other substantive issues. [Own emphasis]
25. Secondly the Applicant claims to be the legal representative of the estate of the late Meli Silandi Nasololo. The Applicant claims to have been issued with a Grant of letters of Administration Intestate on 23rd September, 2021. However the Applicant did not annex a copy of this Grant to his Supporting Affidavit.
26. In the case of [Isaya Masira Momanyi v Daniel Omwoyo & Another](#) [2017] eKLR the court held that:-

“It is trite law that the estate of a deceased person can only be represented in any legal proceedings by a person who is duly authorized to do so on behalf of the estate. Only a person who has been issued a grant of letters of Administration has capacity to represent the estate of a deceased person” [Own emphasis]



27. In the absence of letters of Administration I find that the Applicant does not have the legal authority to represent the estate of Meli Silandi Nasololo. As such this application is a non-starter and is for dismissal.
28. Finally it was submitted that this Court is ‘*functus officio*’ and lacks the jurisdiction to entertain this application.
29. The doctrine of *functus officio* has been defined in the [Black’s Law Dictionary, 9th Edition](#) as:-
“[having performed his or her office]” (of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished.”
29. The Court of Appeal in [Telkom Kenya Limited vs. John Ochanda \(Suing on his Own Behalf and on Behalf of 996 Former Employees of Telkom Kenya Limited\)](#) [2014] eKLR held that:-
“*functus officio* is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon.”
“The doctrine is not to be understood to bar any engagement by a court with a case that it has already decided or pronounced itself on. What it does bar is a merit-based decisional re-engagement with the case once final judgment has been entered and a decree thereon issued. There do therefore exist certain exceptions and these have been captured”
30. Similarly the Supreme Court in [Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 others](#) [2013] eKLR cited with approval an excerpt from an article by [Daniel Malan Pretorius entitled, “The Origins of the functus officio Doctrine, with Special Reference to its Application in Administrative Law” \(2005\) 122 SALJ 832](#) to the effect:-
“A court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties.
Proceedings are only fully concluded, and the court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the court cannot review or alter its decision; any challenge to its ruling or adjudication must be taken to a higher court if that right is available.”
30. The grant in this succession cause has been confirmed and the court vide the judgment delivered on 14th December, 2015 ordered that the estate be distributed in accordance with the Deed of Settlement. The ruling of 2nd December 2020 only allowed for the inclusion of the purchasers in the distribution of the estate.
31. Accordingly the High Court having rendered a decision on the list of beneficiaries as well as the mode of distribution of the estate is now ‘*functus officio*’
32. For all the above reasons I find no merits in this application. The same is hereby dismissed in its entirety. Costs will be met by the Applicants.

DATED IN NYERI THIS 27TH DAY OF MAY, 2024.



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MAUREEN A. ODERO

JUDGE

