



REPUBLIC OF KENYA



**In re Estate of Waweru Chege (Deceased) (Succession Cause 2453 of 2002)
[2024] KEHC 6065 (KLR) (Family) (27 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6065 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2453 OF 2002**

MA ODERO, J

MAY 27, 2024

JUDGMENT

1. The Objector Mary Wanjiru Njogu filed an Affidavit of Protest dated 11th October, 2021 objecting to the confirmation of the Grant issued to the Administrators of the Estate.
2. Simon Nganga Waweru one of the Administrators of the Estate filed a Replying Affidavit dated 30th November, 2021 opposing the Protest filed by the Objector.

Background

3. This matter relates to the estate of the late Waweru Chege (hereinafter ‘the Deceased’) who died intestate on 23rd January, 2000. A copy of the Death Certificate Serial Number 666310 is annexed to the Petition for Grant of letters of Administration Intestate dated 3rd May, 2000.
4. The Deceased was survived by the following persons ;-
 - i. Godfrey Kinyanjui Waweru - son
 - ii. Nganga Waweru - son
 - iii. Kariuki Waweru - son
 - iv. Njunge Waweru - son
 - v. Mary Wanjiru Waweru - daughter
 - vi. Margaret Wambui Waweru - daughter
 - vii. Hanna Nyambura Waweru - daughter
 - viii. Gathoni Waweru - daughter

The assets that comprised of deceased’s estate were indicated as follows;-



- a. Muguga/Kahuho 676
 - b. Muguga/Kahuho 1
5. Mary Wanjiru Njogu the Objector herein who claimed to be a niece of the Deceased served the children of the Deceased with a citation dated 1st April, 2021 to accept or refuse to take out letters of Administration. The said children did not respond to the citations and thus the Objector herself filed a Petition for Grant of letters of Administration intestate dated 24th September, 2002. She was issued with the Grant on 5th October, 2004.
 6. On 20th December, 2004 Geoffrey Kinyanjui Waweru a son of the Deceased filed a Summons seeking Revocation of the Grant which had been issued to the Objector.
 7. The Summons was heard by Hon. Lady Justice Margaret Muigai who in a ruling delivered on 13th July, 2017 revoked the Grant which had been issued to the Objector and made the following orders:-

“Disposition

- i. Therefore, the grant issued on 5th October, 2004 is revoked and a new grant [is issued] in the names of;
 1. Godfrey Kinyanjui
 2. Nganga Waweru
 - ii. The new administrators shall discharge their statutory mandate as prescribed under Section 83 of the *Law of Succession Act* cap 160.
 - iii. The administrators shall file summons for confirmation on proposed mode of distribution of the estate.
 - iv. The Former Petitioner Mary Wanjiru Njogu shall confirm her interest to the suit property.
 - v. Each party to bear own costs.
8. Following that judgment Grant of letters of Administration Intestate was on 13th July, 2017 issued to Godfrey Kinyanjui and Simon Nganga Waweru, both sons of the Deceased. On 2nd September, 2021 the Administrators filed a Summons for confirmation of Grant. All the other children of the Deceased signed a consent to the confirmation of Grant.
 9. In the Supporting Affidavit the estate of the Deceased was to be distributed in the following manner:-



S/No	Description of Property	Share	Beneficiaries
1.	Title No: Muguga/Kahuho 676	To be subdivided into three equal portions marked "A", "B" and "C" as per survey sketch plan annexed	Godfrey Kinyanjui Waweru- Portion "A"
			Joseph Kariuki Waweru - Portion "B"
			Simon Ng'ang'a Waweru- Portion "C"

10. The Objector who claimed to be a niece to the Deceased then filed this protest against confirmation of the Grant.
11. The protest was heard by way of Vive Voce evidence. The Objector told the court that she is the only child of one Willie Kariuki who was the brother of the Deceased. That the Deceased therefore is her paternal uncle.
12. The Objector claims that the property known as Muguga/Kahuho 676 (herein after 'suit land') was family land which was held by the Deceased in trust for himself and the objector's father.
13. The Objector who called four (4) witnesses in support of her case told the court that she grew up on the suit land and that even after the death of her father in the year 1978 she continued to farm on her father's portion of land until the deceased's children chased her out of the property.
14. The Objector stated that she reported the matter to the local chief one Francis Njoroge who called a meeting which was attended by herself, the children of the Deceased and clan members. That the chief urged the family of the Deceased to allow the Objector to continue farming on the suit land.
15. The Objector claims that the suit land originally belonged to her late paternal grandfather Kamenju who in turn gave the land to his two sons (the Deceased and Willie Kariuki) in the year 1952. That since he was the elder son the land was registered in the name of the Deceased and that the Deceased held the same in trust for himself and her father Willie Kariuki'. The Objector told the court that her father passed away in the year 1978. That the matter ended up in court but the Objector stated that she was unaware of the ruling delivered by Hon. Lady Justice Muigai dated 13th July 2017 in which ruling the court directed the Objector to prove her relation with her alleged father 'Willy Kariuki'
16. That when the Objector became aware of this ruling she sought legal advice. Once the Administrators filed their summons for confirmation of Grant, she filed the present protest.
17. The Objector prays that she be included in the distribution of the estate of the Deceased. She seeks to be allocated an equal share of the suit land.
18. Simon Nganga Waweru (DW1) testified on behalf of the estate of the Deceased. He told the court that he was one of the Administrators of the estate of the Deceased.
19. DW1 denied the allegation that his father (the Deceased) held the property known as Muguga/Kahuho/676 in trust for himself and Willie Kariuki. DW1 further denies that the Objector is a member of the Deceased's family and denies that the objector is the daughter of Willie Kariuki as she alleges. He



asserts that the said Willie Kariuki was not married and had no children. DW1 goes so far as to deny that the Deceased and Willie Kariuki were even brothers.

20. DW1 states that the suit land has never been registered to their grandfather Joseph Kibunja Kamenju, as alleged by the Objector. He denies that the Objector ever lived or farmed on the suit land. He states that Willie Kariuki died in the year 1978 and never during his lifetime made any claim over the suit land. That the suit land was registered in the name of the Deceased in 1975. DW1 produced as an exhibit the Green card relating to the land. He reiterates that the same was not family land and denies that the Deceased held the suit land in trust for the said Willie Kariuki.
21. Upon the close of oral evidence the parties were invited to file their written submissions. The Objector filed the written submissions dated 11th July, 2023 whilst the Administrators relied upon their submissions dated 4th May, 2023.

Analysis and Determination

22. I have carefully considered this protest against confirmation of Grant, the evidence adduced by the witness as well as the written submissions filed by the parties. The Objector is challenging the confirmation of the Grant issued to the Administrators as well as the proposed mode of distribution of the estate on grounds that the property known as Muguga/Kahuho/676, which is alleged to belong to the estate of the deceased was actually held by the Deceased in trust for himself and one Willie Kariuki whom the objector claims was her father.
23. The first question the court must consider is whether the objector has 'locus standi' in this succession course. Locus standi is a latin term which internally means 'place of standing' and refers to the capacity of an individual to be heard in a particular matter.
24. It is trite law that pleadings filed by a person who has no Locus Standi are void ab initio. In *Ibrahim - vs- 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 preliminary issues which must be dealt with and settled before delving into other substantive issues. [Own emphasis]
25. This is a succession cause. The duty of this court is to oversee and supervise the distribution of the estate to the genuine beneficiaries. In *Re Estate Of GKK (Deceased)* [2017] eKLR the court held that:-

“The primary functions of a Probate Court is distribution of the estate of a dead person”
26. As a general rule the persons who would have proper 'locus standi' in a succession matter would be the beneficiaries/heirs of the Deceased person[s] as well as any persons recognized as dependants under Section 29 of the *Law of Succession Act*, Cap 160, laws of Kenya.
27. The objector is not a child of the Deceased, nor does she claim to be a dependant in terms Section 29. She is therefore not a beneficiary to the estate.
28. The objector merely bases her claim to a share of the estate on the allegation that the estate property was being held in trust for her father.



29. The Objector is pursuing this claim to a share of the suit land on behalf of the man she claims was her father one Willie Kariuki. She stated that the said Willie Kariuki passed away in 1978. Therefore the objector is pursuing the claim on behalf of the estate of this Willie Kariuki.
30. It is trite law that only a person who has been issued with a Grant of Representation may act on behalf of the estate of a Deceased person. The Objector herein does not hold any form of a Grant of Representation in respect of the estate of Willie Kariuki.
31. In the case of *Isaya Masira Momanyi -vs- 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]
32. Given that the objector has no Grant of letters of Administration issued to her in respect of the estate of Willie Kariuki she has no legal authority to pursue a claim on behalf of that estate. Based on the above I find that the objector does not have locus standi in this succession cause.
33. The certificate of official search dated 20th March, 2002 for the property known as Muguga/Kahuho/676 reveals that the proprietor of the said property is Waweru Chege who is the Deceased in this matter. There is no mention that the suit property was being held ‘in trust.’
34. Accordingly I am satisfied that the suit property has properly been included in the estate and is available for distribution to the beneficiaries of the estate.
35. Aside from the objectors lack of locus stand in this succession cause I do also find that the matters being raised in her Affidavit of protest are ‘Res Judicata’
36. The substantive law on res judicata is found in Section 7 of the
- “No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court”
37. *Black’s law Dictionary* 10th Edition defines ‘res judicata’ as (An issue that has been definitely settled by judicial decision..... The three essentials are (1) an earlier decision on the issue, (2) a final judgment on the merits and (3) the involvement of same parties, or parties in privity with the original parties....”
38. In the case of *Christopher vs Salama Beach* (2917) eKLR, the court clearly stated the ingredients to be satisfied when determining res judicata thus;
- a. The suit or issue was directly and substantially in issue in the former suit.
 - b. Former suit between same parties or parties under whom they or any of them claim.
 - c. Those parties are litigating under the same title.
 - d. The issue was heard and finally determined.



- e. The court was competent to try the subsequent suit in which the suit is raised.”
39. I have carefully perused the Ruling delivered by Hon. Lady Justice Muigai on 13th July 2017. In that ruling the court addressed the issue of the objectors claim to the suit property and dismissed the same stating as follows;-
- “The Petitioners [objectors] claim as beneficiary and/or dependant of the deceased’s estate is not borne out by evidence on record as it is convoluted and contradictory and in the absence of testing veracity and credibility of such evidence at least with regard to the members of the family who are alive and well, this court cannot rely on it in determination of the Petitioners’ beneficial interest to the deceased’s estate” [Own emphasis]
40. This ruling was delivered in a matter involving the same parties and in which the same issue i.e the question of whether the objector had a legitimate and/or valid claim to the estate of the Deceased was being considered. In light of the ruling delivered on 13th July 2017 the only remedy available to the objector was to appeal the said ruling. To raise the same issues again before the High Court through this Affidavit of protest renders her protest Res Judicata.
41. If the objector still wishes to pursue her claim to the suit land then her remedy lies in the Environment and Land Court, which is the only court mandated by Section 162 (2) (b) of *the Constitution* of Kenya 2010 to determines issues of ownership use and occupation of land. The ELC is the only court authorised to determine if the deceased truly held the property known as Muguga/Kahuho/676 in trust. In *Re-estate of Mimukira M’arimi (Deceased)* [2019] eKLR the court held that
- “.....The Petitioners position, which is correct in law, is that a Family court is not the forum, for settling land disputes. That its jurisdiction is only limited to identifying the estate of a deceased, the beneficiaries and distributing the estate accordingly” [Own emphasis]
42. Finally I find no merit in the Affidavit of protest dated 11th October, 2021, the same is dismissed in its entirety. Each party shall bear their own costs.

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

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MAUREEN A. ODERO
JUDGE

