



**In re Estate of Jedrine Kaari Mucunku (Deceased) (Miscellaneous Succession Cause E015 of 2022) [2023] KEHC 20653 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 20653 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
MISCELLANEOUS SUCCESSION CAUSE E015 OF 2022**

**MS SHARIFF, J**

**MARCH 24, 2023**

**IN THE MATTER OF ESTATE OF JEDRINE KAARI MUCUNKU  
(DECEASED)**

**BETWEEN**

**GLADY'S GAKII GITONGA ..... APPLICANT**

**AND**

**TEACHERS SERVICE COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**JAMLICK GITONGA NJUE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**A. Case Background**

1. On May 12, 2022 the Applicant herein obtained a Limited Grant of representation of the estate of her mother one Jedrine Kaari Mucuuki (deceased), limited only for her purposes of filing suit.
2. Prior to the grant of the aforesaid letters of administration ad litem, the Applicant had on May 5, 2022 instructed the law firm of Maina Muiruri & Company Advocates to issue a demand letter to the Teachers Service Commission (the 1<sup>st</sup> Respondent) instructing it not to pay any death gratuity and pension benefits to the Applicant's father one Jamlick Gitonga Njue (the 2<sup>nd</sup> Respondent) without the Applicant's and her siblings' consent. She further sought provisions of information and documents relating to the aforesaid payments that were due following the demise of her mother (the deceased) who was at all material times a teacher employed by the 1<sup>st</sup> Respondent.

**B. Application**

3. Subsequent to the issuance of the aforesaid limited grant, the Applicant approached this court vide a summons dated June 7, 2022 which is supported by her affidavit sworn on even date.



4. The Applicant's application is premised on Section 47 of the *Law of Succession Act* Cap 160 Laws of Kenya and Rules 49 and 73 of the *Probate and Administration Rules*.
5. The Applicant is seeking restrictive injunction orders against the Respondent and mandatory injunction orders against the 1<sup>st</sup> Respondent. It is her prayer that the 1<sup>st</sup> Respondent be restrained from processing and paying out the death gratuity and pension of the deceased to the 2<sup>nd</sup> Respondent and further that the latter be restrained from processing and accessing the said payments without the consent of the Applicant and her siblings pending the hearing and determination of this application.
6. The Applicant also craves that the 1<sup>st</sup> Respondent be compelled to furnish her with all relevant details and information relating to the death gratuity and pension of the deceased and the status of the payment pending the hearing and determination of this application.
7. The application is resisted by both Respondents who have duly filed their grounds of opposition and affidavits in reply with the 1<sup>st</sup> Respondent denying any knowledge of commencement of the processing of the payments while the 2<sup>nd</sup> Respondent deposes that he is his wife's nominee and has indeed commenced the process of following up the death gratuity and pension.

### **C. Submissions**

8. Directions were taken that the application herein be canvassed by way of written submissions and the Applicant and the 2<sup>nd</sup> Respondent duly complied.

#### **i. Applicant's submissions**

9. The Applicant submits that she brings this application on behalf of her two siblings and on her own behalf for reasons that the 2<sup>nd</sup> Respondent has been economical with information and has declined to allow them participate in the process of pursuing the payments under reference. She therefore posits that they have a legitimate claim and right to a share of the said monies and that they stand a risk of being disinherited by their father, the 2<sup>nd</sup> Respondent.
10. The applicant submits that the 2<sup>nd</sup> Respondent should involve them the same way he did when he pursued the Transnational Sacco shares and each beneficiary got their respective shares.
11. The Applicant submits that her demand for information from the 1<sup>st</sup> Respondent has not elicited any response and her siblings and herself stand to suffer loss of their shares in the event the restrictive injunction orders are not granted.

#### **ii. 2<sup>nd</sup> Respondent's submissions**

12. The 2<sup>nd</sup> Respondent submits that the Applicant's application herein is bad in law and a nonstarter as it is not based on any suit. The 2<sup>nd</sup> Respondent takes the position that the *Law of Succession Act* is a self-satisfying statute and that the provisions of Order 40 of the *Civil Procedure Rules* have not been imported unto the Law of Succession under the provision of Rule 63 of the *Probate and Administration Rules*, wherefore this court lacks the jurisdiction to grant injunction orders.
13. The 2<sup>nd</sup> Respondent submits that the applicant's application herein is actuated by malice and the same is aimed at creating a rift in an otherwise harmonious family.
14. The 2<sup>nd</sup> Respondent maintains that he is the widower and nominee of the deceased and he has previously distributed the Trans-National Sacco shares among his children and himself and that whereas he only allocated himself Kshs 225,529, the applicant and Morris Munene Gitonga each got



Kshs 236,697 whilst Alice Ngina Gitonga got Kshs 328,697 wherefore the applicant has not laid any basis for her allegations that the 2<sup>nd</sup> Respondent does not intent to share the death gratuity and pension dues of the deceased with the other beneficiaries.

15. The 2<sup>nd</sup> Respondent faults the Applicant for not applying for a full grant and further for not referring her issues to an alternative dispute resolution mechanism.
16. Finally, the 2<sup>nd</sup> Respondent maintains that he is following up of the dues under reference as the nominees of the deceased and his conduct can never amount to intermeddling with the estate of the deceased.

#### **D. Analysis and Determination**

17. The issues that lend themselves for determination are the following: -
  - a. Does this court have jurisdiction to grant injunction orders?
  - b. Has the applicant made out a case for grant of restrictive and mandatory injunction?
  - c. Has the 2<sup>nd</sup> Respondent intermeddled with the estate of the deceased.
18. The question whether the court has jurisdiction to grant injunction order has longed been answered by our courts in the affirmative. In the case of *Floris Piezzo & Another vs Giancatlo Falasconi* (2014) eKLR the Court of Appeal stated: -

“We have carefully considered the grounds of appeal, rival written and oral submissions and the law. The application before the High Court was for temporary injunction to restrain the appellant from dealing with the suit premises in a manner inimical to the estate of the deceased. The question which were and had to be determined first was whether the court had jurisdiction to grant an injunction in a succession cause. The Appellants took the position that the court had no such jurisdiction whereas the respondent took contrary position. However, the High Court was persuaded that Rule 73 of the *Probate and Administration Rules* reserved the court’s inherent jurisdiction to allow for the grant of injunctions in deserving cases. We are in total agreement with this conclusion. We have no doubt at all that the *Law of Succession Act* gives the court wide jurisdiction in dealing with testamentary and administration issues of an estate. Indeed, Section 47 of the said Act gives the court jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decree and orders as may be expedient. It cannot be said that such decreed and orders would exclude injunctive orders. In other words, we are of the same view that Section 47 of the Act gives the court all-embracing powers to make necessary orders including injunctions when appropriate to safeguard the deceased’s estate.”

19. The second question is whether the applicant has made out a case for grant of injunction orders. The principle for grant of the said orders were enunciated in the locus classica on injunctions that is *Giella vs Cassman Brown* (1973) EA 358. The tripartite requirements are whether the applicant has a prima facie case with a high probability of success, that the applicant stands to suffer irreparable injury and that the balance of convenience is in her favour. In the case of *Jan Bonde Nielsen vs Ngurumau Ltd* (2016) eKLR the court added that the general circumstances of the case and the overriding objective of the law are factors that the court will consider in addition to the three that were set out in *Giella vs Cassman Brown*.



## **Prima facie case**

20. The definition of a prima facie case was made in the case of *Mrao Ltd vs First American Bank of Kenya Ltd* (2003) eKLR by the court of Appeal when it stated that:-
- “...in civil cases, it is a case which on the material presented to a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposing party as to call for an explanation or rebuttal from the latter.”
21. The application herein as instituted does not disclose any Respondents. Save to state that the application was intended to be served upon the Teachers Service Commission and Jamlick Gitonga Njue. I have search high and low in the applicant’s pleadings and the court record for the point of entry of the Respondents herein without success.
22. Given that the parties upon whom it was served did appear and have responded thereto I will excuse the Applicant’s said glaring omission in the application as intituled, under the provisions of Article 159 (2) (d) of the *Constitution* of Kenya 2010 which enjoins this court to adjudicate on this matter on merit without undue regard to procedural technicalities.
23. Whereas the Applicant has annexed the limited grant to her supporting affidavit, the same does not reveal that she is acting on her own behalf and on behalf of her siblings and no consent was obtained from them wherefore this court will proceed on the premise that this application is prosecuted by the applicant on her own singular behalf and not otherwise.
24. So far, the applicant is yet to apply for a full grant of as envisaged under Section 51 of the *Law of Succession Act* wherefore this court has no petition upon which to establish what constitutes the assets and liabilities of the estate of the deceased. In essence this application lacks substratum. The issue of intermeddling with the estate of the deceased by the 2<sup>nd</sup> Respondent cannot therefore arise in these circumstances.
25. The applicant has conceded that the 2<sup>nd</sup> Respondent shared out the Trans-National Sacco shares among his children and himself with him taking the least share. No evidence has been placed before this court to show that the 2<sup>nd</sup> Respondent has had a change of heart to the applicant’s detriment.
26. Given that the applicant herein is duty bound to establish the principles under *Giella vs Cassman Brown* singularly and sequentially, and in light of the fact that I have found that this application is not premised on any foundation, that is a petition for full grant, I need not delve into the other principles. A structure constructed without a foundation is bound to collapse wherefore the application herein tumbles.

## **Conclusion**

27. This application is devoid of merit and the same is dismissed with costs to the Respondents.  
It is hereby so ordered.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 24<sup>TH</sup> DAY OF MARCH 2023**

**MWANAISHA S. SHARIF**

**JUDGE**

