



**In re Estate of Esther Njeri Kamau (Deceased) (Succession Cause  
1467 of 2019) [2023] KEHC 17412 (KLR) (Family) (28 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 17412 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 1467 OF 2019**

**MA ODERO, J**

**APRIL 28, 2023**

**IN THE MATTER OF THE ESTATE OF ESTHER NJERI KAMAU (DECEASED)**

**BETWEEN**

**GEOFFREY KURIA MUGWANJA ..... 1<sup>ST</sup> APPLICANT**

**DAVID NJUNGE KIARIE ..... 2<sup>ND</sup> APPLICANT**

**AND**

**NGUGI KAMAU ..... 1<sup>ST</sup> ADMINISTRATOR**

**DANSON KARIUKI NYORI ..... 2<sup>ND</sup> ADMINISTRATOR**

**KENNETH KAMAU KIARIE ..... 3<sup>RD</sup> ADMINISTRATOR**

**AND**

**WILFRED KAMAU KIRUBI ..... INTERESTED PARTY**

**AND**

**WILFRED KAMAU KIRUBI ..... INTERESTED PARTY**

**RULING**

1. Before this Court is the Notice of Motion dated 19<sup>th</sup> May 2022 by which the Objectors seeks the following orders:-

“1. Spent.



2. That pending the hearing and determination of the application inter-parties the objectors should be granted leave to amend the summons for Revocation of Grant before the hearing date of the application.
  3. That costs of the application be provided for.”
2. The application which was premised upon Sections 1A, 1B, and 3A of the *Civil Procedure Act*, Order 1 Rule 10 (4), Order 51 Rule 1 of the Civil Procedure Rules 2010 and all other enabling provisions of Law was supported by the undated Affidavit sworn by Wilfred Kamau Kirubi.
  3. The Application was not opposed as the Administrators of the estate did not put in a Replying Affidavit. The matter was canvassed by way of written submissions.
  4. The Objectors filed the written submissions dated 7<sup>th</sup> November 2022.

### **Background**

5. This Succession Cause relates to the estate of the late Esther Njeri Kamau (herein after ‘the Deceased’) who died on 28<sup>th</sup> May 2019. A copy of the Death Certificate Serial Number 08XXXXXX is annexed to the Petition for Grant of Probate dated 1<sup>st</sup> November 2019.
6. Following the demise of the Deceased Geoffrey Kuria Mugwanja and David Njunge Kiarie filed a Petition for Grant of Probate with Written Will in Succession Cause No. 1043 of 2019. A Grant was duly issued to the two (2) on 4<sup>th</sup> December 2019.
7. Thereafter Ngugi Kamau, Danson Kariuki Nyori, And Kenneth Kamau Kiairie in their capacity as brother and nephews of the Deceased filed another Succession Cause No. 1467 of 2019 in which they Petitioned the court for Grant of letters of Administration Intestate to the estate of the Deceased. A grant was duly issued to the three (3) on 2<sup>nd</sup> May 2019.
8. The Objectors herein then filed a summons seeking to revoke the Grant issued on 19<sup>th</sup> March 2020. Thereafter the objectors filed this Notice of Motion seeking to amend the summons for revocation of Grant in order to correct certain defects/omissions in the summons. They argued that the amendment was necessary to enable the court know the relevant parties. That no prejudice would be occasioned to the Administrators if the orders sought were granted.

### **Analysis and Determination**

9. I have carefully considered this application as well as the submissions filed by the Objectors. The legal principles governing the amendment of the pleadings are now well settled as set out in Section 100 of the *Civil Procedure Act*. In the case of *St. Patrick Hill School Limited V Bank Of Africa Limited* [2018] eKLR held that:-

“The issue for determination as far as this application is concerned is whether the Applicant’s Notice of Motion for amendment has merit and ought to be entertained. The law as regards the grant of leave to amend are well settled. The general rule on this subject is that amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side, and there in no injustice if the other party can be compensated by costs. (See *Eastern Bakery v Vastelino* (19580 EA 461). The main principle is that an amendment should not be allowed if it causes injustice to the other side (see “Chitale, P.BB”). on the same subject, in the case of *Abdul Karim Khan v Mohamed Roshan* (1965) EA. 289 (C.A.), the court laid down the principle that the courts will not



permit an amendment that is inconsistent with original pleading and entirely alters the nature of the defence of plaintiff. The principles upon which a court acts in an application to amend a pleading before/during trial are also well settled and succinctly stated in *Eastern Bakery v. Casteline*, (1958) E.A. 461 (U) at ; p.462:

“It will be sufficient, for purposes of the present case, to say that amendments to pleadings sought before the hearings should be freely allowed, if they can be made without injustice to the other side, and that there is no injustice if the other side can be compensated by costs.” [own emphasis]

10. Similarly in *Elijah Kipngeno Arap Bii -v-kenya Commercial Bank Ltd* [2013] eKLR the court stated as follows:-

“The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the court at any state of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case of new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; that the plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaintiff the defendant would be deprived of his right to rely on Limitation Acts.”

11. Finally in *Sultanali Prarali Molu & Another V Kenya Railways & Another* [2002] e KLR, Onyango Otieno J (as he then was) stated as follows:-

“I think the reason why amendments to pleadings are generally granted without much fuss particularly before the hearing is because such amendments help to have all matters between the parties in the suit availed to the suit so that the court may be in a better position to have an informed view of the entire case and that ensure justice”

12. As stated earlier this application for amendment is not opposed. The Administrators and the Interested Parties do not stand to suffer any prejudice if the amendments sought are allowed. I therefore allow this Notice of Motion in terms of prayer (2) thereof. The Objectors to file and serve the amended summons within Thirty (30) days of the date of this Ruling.

**DATED IN NAIROBI THIS 28<sup>TH</sup> DAY OF APRIL, 2023.**

.....  
**MAUREEN A. ODERO**

**JUDGE**

