



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Stephen Kibuika Ranji (Deceased) (Succession Cause  
1911 of 2012) [2023] KEHC 21330 (KLR) (Family) (9 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21330 (KLR)

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

**FAMILY**

**SUCCESSION CAUSE 1911 OF 2012**

**MA ODERO, J**

**AUGUST 9, 2023**

**IN THE MATTER OF THE ESTATE OF STEPHEN  
KIBUIKA RANJI (DECEASED)**

**BETWEEN**

**MAGDALENE WAITHERA KIBUIKA ..... APPLICANT**

**AND**

**JANE NJERI MWANGI ..... RESPONDENT**

**RULING**

1. Before this Court for determination is the summons for revocation of Grant dated November 3, 2016 by which the Applicant Jane Njeri Mwangi seeks the following orders:-
  - “1. That this honourable court be pleased to issue an order restraining the Respondent herein the administrators of the Estate of Stephen Kibuika Ranji from in any way dealing, transacting, alienating or transferring land parcels in the deceased’s names mentioned in the succession cause or any part/portion thereof to anybody else or to their names and/or collecting the rents generated by the rental properties in the names of the deceased pending the hearing and determination of this application.
  2. That this honourable court be pleased to direct that all the rental income from the properties of the deceased be collected by an agent and the same be deposited in a account to be opened by the advocates of the parties herein.
  3. That this honourable court be pleased to revoke the grant issued to the administrators herein.



4. That costs of this application be provided for.”
2. The summons was premised upon Section 76 of the *Law of Succession Act* Cap 160 Laws of Kenya, Rule 44(2), 49 and 73 *Probate and Administration Rules* and all other enabling provisions of the law.
3. The Respondent/Administrator Magdalene Waithera Kibuika opposed the summons through her Replying Affidavit dated November 29, 2018. The matter was canvassed by way of written submissions. The Applicant did not file any written submissions whilst the Respondent relied upon her written submissions dated March 28, 2022.

## **Background**

4. This Succession Cause relates to the estate of the late Stephen Kibuika Ranji who died intestate on November 14, 2008.
5. Following the demise of the Deceased his widow Magdalene Waithera Kibuika filed a petition for Grant of letters of Administration Intestate dated October 28, 2010. A Grant was duly issued to the Respondent and Lucy Muthoni Kibuika as Administrators of the estate on July 11, 2017.
6. The Administrators then filed a summons for confirmation of Grant dated February 14, 2018. The Grant is yet to be confirmed.
7. The Applicant has now filed this summons seeking to have the Grant which was issued to the Respondent revoked. The Applicant claims that she is the second wife of the Deceased and therefore she is beneficiary of the estate of the Deceased. That she and the Deceased cohabited as man and wife at Mau Narok and they bore children together all of whom the Deceased recognized as his own and provided for.
8. The Applicant claims that she and her children are entitled to a share of the rental income derived from properties belonging to the estate.
9. The Applicant contends that the Respondent misled the court by misrepresenting herself as the only widow of the Deceased. That therefore the Grant issued to the Respondent ought to be revoked.
10. On her part the Respondent categorically denies that the Applicant was the second wife to the Deceased. She denies that the Deceased had recognized and accepted the children of the Applicant as his own. The Respondent casts doubt on the veracity of the birth certificates produced by the Applicant. She urges the court to dismiss this summons in its entirety.

## **Analysis and Determination**

11. I have considered the summons dated November 3, 2016, the reply filed thereto and the written submissions on record. Although directions had been given for hearing of the summons by way of written submissions, it is my considered opinion that the issues raised in the summons cannot adequately be canvassed by way of written submissions.
12. The question of whether the Applicant was a wife to the Deceased, the status of the Applicants children and the question of the validity of the birth certificate produced as exhibits are all issues which can only properly be determined by way of a hearing by oral evidence at which parties will be at liberty to call witnesses and be at liberty to cross-examine said witnesses.
13. In the interest of justice and in the interest the court reach a conclusive determination on this matter, I set aside the earlier directions made on October 9, 2019. Instead I direct that the summons for



revocation of Grant shall be heard by way of *Vive Voce* evidence in open court. It is so ordered. Each side to meet its own costs.

**DATED IN NAIROBI THIS 9<sup>TH</sup> DAY OF AUGUST, 2023.**

.....

**MAUREEN A. ODERO**

**JUDGE**

