



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of John Kiragu Gituku (Deceased) (Succession Cause
435 of 2013) [2022] KEHC 10247 (KLR) (Family) (24 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10247 (KLR)

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

FAMILY

SUCCESSION CAUSE 435 OF 2013

MA ODERO, J

JUNE 24, 2022

BETWEEN

LYDIA MUTHONI WAHOME PETITIONER

AND

PURITY WANJIRU KIMANI 1ST OBJECTOR

PAUL NDERITU WANJIRU 2ND OBJECTOR

RULING

1. Before this court for determination is the summons dated November 2, 2021 by which the 1st objector Purity Wanjiru Kimani seeks the following orders:-

“ 1. Spent.

2. That the petitioner Lydia Muthoni Wahome be and is hereby ordered to pay all college fees and upkeep at Satakunta University of Applied Sciences (SAMK) for the beneficiary SWK of 11470 Euros from the estate pending confirmation of the grant herein.

3. That the Petitioner Lydia Muthoni Wahome be and is hereby ordered to pay all the subsequent college fees and upkeep required for the beneficiary SWK until completion of her studies at Satakunta University of Applied Sciences (SAMK).

4. That costs of this application be provided for.”

2. The application which was premised upon section 26, 27, 28, 29 of the *Law of Succession Act* (cap 160 Laws of Kenya), rules 73 of the *Probate and Administration Rules, Judicature Act* (Cap 8 Laws of



Kenya) and all other enabling provisions of the Law and was supported by the Affidavit of even date sworn by the 1st objector.

3. The petitioner/respondent Lydia Muthoni Wahome opposed the application through the replying affidavit dated December 22, 2021. The application was canvassed by way of written submissions. The 1st objector filed undated written submissions whilst the petitioner/Respondent filed the submissions dated April 25, 2022.

Background

4. This succession cause relates to the estate of John Kiragu Gituku (herein after ‘the Deceased’) who died intestate on December 25, 2012 as evidenced by copy of Death Certificate Serial No. 333054. The Deceased was said to have been survived by the following persons.
 - a) Lydia Muthoni Wahome – widow
 - b) Richard Gituku Wahome – son
 - c) David Wahome Kiragu - son
 - d) Hellen Watetu Kiragu - daughter
 - e) Stephen Gikinya Kiragu – son
5. Following the demise of the deceased Lydia Muthoni Wahome (the widow) and Richard Gituku Wahome (son) jointly petitioned the court for grant of letters of administration intestate.
6. However the grant was not issued to the petitioners as the 1st objector Purity Wanjiru Kimani filed an objection to the making of grant and a Cross-Petition both dated December 18, 2013 alleging that they were the widow and daughter respectively of the deceased and had been excluded as survivors/dependants in the petition. The 1st objector Purity Wanjiru Kimani claimed to have also been married to the deceased who sired two children with her namely;
 1. Catherine Wairimu Kiragu
 2. Sylvia Wambui KiraguThat objection is yet to be heard and determined.
7. The 1st objector avers that she is the mother of the 2nd objector who is a biological child of the deceased. That vide a ruling delivered on September 30, 2021 her 2nd born child Sylvia Wambui Kiragu was declared to be a child of the deceased and a beneficiary to the estate following conclusive DNA sampling.
8. The 1st objector states that her daughter Sylvia has obtained admission at Satakunta University of Applied Sciences (SAMK) in Finland to undertake Bachelor Degree in Nursing commencing January 2022. That the tuition fees required is 4,750 Euros plus 6,720 Euros for food and accommodation annually.
9. The 1st objector avers that since the demise of the deceased in December 2012 neither she nor her children have benefited in any way from the vast estate of the Deceased. That due to the Covid-Pandemic her Pharmacy business has ground to a halt and thus she is not able to raise the fees required for her daughter to commence her studies in Finland. She prays that the court issue orders directing the petitioner to pay all the college tuition and upkeep fees for Sylvia Wambui Kiragu amounting to 11,470 Euro’s out of the estate of the Deceased pending the confirmation of the Grant.



10. In opposing the application, the petitioner points out that due to the objection filed by the 1st objector no substantive administrator has as yet been appointed for the estate of the deceased. She further avers that the course in Bachelor of Nursing is available locally thus, there is no need for the 1st objector to send her daughter to study abroad at such an exorbitant cost.
11. According to the petitioner it would be prudent for the objector to await distribution of the estate when she can utilize her daughters share to finance the education in Finland. She states that the estate is not financially able to sustain and maintain the lifestyle which the objector and her daughter wish to live. The Petitioner urges the court to dismiss this application in its entirety.

Analysis and Determination

12. I have carefully considered the application before this court, the Reply filed thereto as well as the written submissions filed by both parties. The only issue for determination is whether the court ought to order this amount of Euros 11,470 to be paid out of the estate of the deceased in order to cater for the education of Sylvia in Finland.
13. I have perused the ruling delivered on September 30, 2021 by Hon Lady Justice Ali –Aroni. In that Ruling, the court ordered that ‘S’ be subjected to a DNA test. The orders made and issued on February 25, 2022 read as follows: -
 - “ 1. That upon receiving evidence, the court was not convinced to have C subjected to a DNA test, but directed her sister Sylvia to be subjected to the same. The courts position remains.
 2. That the court is convinced that enough evidence has been placed before court to prove that the deceased was the father of Catherine and he indeed did take care of her welfare including her education, subjecting C to a DNA test against ample evidence would be unjustified, unfair and in injustice. The applicant has not laid any basis for the need for the DNA test.
 3. That matter to be mentioned further on a date to be agreed upon for directions.
14. The sister whom the court directed was to undergo a DNA test was SWK. In her Supporting Affidavit the 1st Objector asserts that the said Sylvia was declared a beneficiary of the estate following a conclusive DNA test. However, no copy of the said DNA test had been annexed to the supporting affidavit nor has the 1st objector mentioned the date of the Ruling in which SW was declared to be a child of the deceased and a beneficiary to his estate. No such Ruling has been annexed by the 1st objector to her summons.
15. Upon perusing the court file I have only seen two rulings prepared by Hon Justice Ali-Aroni. In the ruling delivered on September 30, 2021 the court in paragraph 20 directed that the sister of ‘Catherine’ be subjected to a DNA test. Further in a hand written ruling delivered on July 29, 2019 the court directed that SWK be subjected to a DNA test. Nowhere in the proceedings have I seen a declaration made by the court that SWK was found and declared to be a child of the deceased.
16. Be that as it may even if this court was to proceed on the assumption that the said ‘S’ was declared to be a child of deceased and a beneficiary to his estate this application would still run into headwinds for the following reasons.
17. From the documents availed to court specifically the Birth Certificate Annexure ‘PWK ‘1’ to the 1st objector supporting affidavit dated 8th May 2015 the said ‘Sylvia’ is said to have born on November



- 1, 2001. She is therefore now aged 21 years old and is an adult. Why has she not filed the application on her own behalf? There is no written authority from 'Sylvia' authorizing her mother to file suit on her behalf. No reason has been advanced as to why the 1st objector filed this application on behalf of her adult child.
18. Secondly, the said 'Sylvia' is said to have secured admission in a University in Finland where an amount of 11,450 Euro's is required annually as fees. This is approximately Kshs 1.4 million annually. As appointed out by the petitioner Bachelors in Nursing is a degree course which is available locally in Kenya at a fraction of this cost. 'Sylvia' is not the only beneficiary to the estate of the deceased. There are at least five (5) other beneficiaries to the estate. If the 1st objector wishes to accord her daughter the luxury of international study then she must be prepared to pay for this herself. The objector cannot demand that the estate, which has other beneficiaries, shoulder the cost of the education of her daughter to study abroad for a degree which is available locally.
19. Whilst the court is alive to the right of Sylvia to an education that right must be exercised within reason. Moreover, it is a fact that the 1st objector has filed an objection to the making of grant which objection is yet to be heard. Currently the estate has no Administrator. The right (if any) which the 1st objector and her daughter would have to the estate of the deceased are yet to be determined. It has not been established what share (if any) they are entitled to. The estate is yet to be distributed. It would be prudent for the 1st objector to await the hearing of her objection and the final distribution of the estate. She can then proceed to apply her share of the estate (if any) towards her education in Finland. At this point, the application is in my view premature.
20. All in all I find no merit in this application. The same is dismissed in its entirety. Each party shall pay its owns costs.

DATED IN NAIROBI THIS 24TH DAY OF JUNE, 2022.

.....

MAUREEN A. ODERO

JUDGE

