



REPUBLIC OF KENYA



**Gichamba v Gichamba & another (Succession Cause E2590 of 2021)  
[2022] KEHC 14750 (KLR) (Family) (28 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14750 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E2590 OF 2021  
MA ODERO, J  
OCTOBER 28, 2022**

**BETWEEN**

**LUCIA NJERI GICHAMBA ..... APPLICANT**

**AND**

**ESTHER WANGUI GICHAMBA ..... 1<sup>ST</sup> RESPONDENT**

**BEATRICE WANJA NJOROGE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before this court for determination is the summons dated May 5, 2022 by which the applicant Lucia Njeri Gichamba sought the following orders:-
  1. That the applicant be and is hereby granted leave to be admitted as an interested party.
  2. That the cost of this application be in the cause.”
2. The application which was premised upon section 3 and 3A of the *Civil Procedure Act*, section 47 of the *Law of Succession Act*, rule 58 of the *Probate and Administration Rules* and all other enabling provisions of the law was supported by the affidavit of even date sworn by the applicant.
3. The respondent Esther Wangui Gichamba and Beatrice Wanja Njoroje both opposed the application through their replying affidavit dated June 6, 2022. The matter was canvassed by way of written submissions. The applicant filed the written submissions dated July 6, 2022 whilst the respondent filed written submissions dated July 18, 2022.

**Background**

4. The succession cause relates to the estate of the late Njoroje Mwaniki Gichamba, (hereinafter ‘the deceased’) who was presumed dead by virtue of an order issued by the court on July 30, 2021. A copy of



the said court order is annexed to the petition for grant of letter of administration intestate (annexture 'NMGI').

5. The respondents who claim to be the daughters of the deceased filed in the High Court a petition for grant of letters of administration on September 24, 2021. A grant was duly issued to the respondents on April 14, 2022. Thereafter the applicant filed this application seeking to be enjoined as a party to this succession cause.
6. The applicant claims to be the widow of one Njoroge Mwaniki alias Gichamba with whom she bore six (6) children. The applicant states that her husband died in Nairobi on March 11, 1995. The applicant states that she instructed her Advocate to file a succession cause in respect of her late husband. To their surprise, they discovered that the present succession cause had already been filed. Hence this application by the applicant seeking to be enjoined in the matter.

### **Analysis and Determination**

7. I have carefully considered this application, the reply filed by the respondents as well as the written submissions filed by both parties. The applicant herein seeks to be enjoined as an interested party in this matter.
8. Under rule 2 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013* (Mutunga Rules) on “interested party” is defined as an entity that has an identifiable stake or legal interest in the proceedings or may not be involved in the litigation.
9. In *Trusted Society of Human Rights Alliance v Mumo Matemu* [2014] eKLR the Supreme Court held as follows:-

“An interested party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is one who will be affected by the decision of the court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or herself appears in the proceedings, and champions his or her cause.....”

10. Similarly in *Francis Kariokor Muruatetu and another v Republic & 5 others* [2016] eKLR the scope for admission as an interested party was delineated as hereunder:-

“From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party:

One must move the court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the court; hence, sufficient grounds must be laid before the court, on the basis of the following elements:-

- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
- ii. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.
- iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the court, and demonstrate the relevance of those submissions. It should also



demonstrate that these submissions are not merely a replication of what the other parties will be making before the court.”

11. Finally, Gitari J in the case of *AMM vs JMM* [2019] eKLR had this to say about an interested party:-

“An interested party is one who has a stake in proceedings, though he was not a party to the cause *ab initio*. He is one who will be affected by the decision of the court when it is made, either way. The court should not act in vain by enjoining a party that clearly would have no interest in the subsequent proceedings.”
12. This is a succession cause. As such those who would qualify as interested parties would be the beneficiaries of the estate i.e., spouse(s), children of the deceased, creditors and any other person having a legal claim to the estate. The applicant herein claims that the deceased was her husband and on this basis asserts that she and her six (6) children are beneficiaries to the estate and are interested parties in this cause.
13. In opposing the application the respondents assert that the deceased in this cause is not the man who was married to the applicant. They insist that the applicant is a stranger in this succession cause. The respondents point out certain anomalies regarding the averments made by the applicant.
14. Firstly, the applicant gives the name of her deceased husband as Njoroge Mwaniki alias Gichamba. The deceased in this succession cause who was the father to the respondents is named Njoroge Mwaniki Gichamba.
15. I do concede that the names are similar enough to cause some confusion. However, other differences persuade this court that the two parties are not referring to the same person.
16. The applicant told the court that her late husband died on March 11, 1995. She has annexed to her summons a copy of the death certificate number 551991 (annexture ‘LN-3a’) indicating that the deceased died in Nairobi on March 11, 1995
17. The deceased to whom this succession cause relates was presumed dead vide a court order dated August 17, 2021 issued by the High Court No death certificate was issued. The man who the applicant is referring to actually died in March 1995 a full two (2) years before the respondents father was presumed to be dead by the court.
18. The Chiefs letter dated May 17, 2021 indicates that respondents Father disappeared from his home on March 17, 1997. This was two (2) years after the applicant’s husband had died. There is no way the same man could have died in 1995 only again to have disappeared from his home in March 1997. Clearly, the parties are not talking about the same person.
19. Finally, the applicant has staked a claim to the parcel of land known as Dagoretti/Kangemi/T237 where she claims to have resided with her late husband. In the petition filed by the respondents they have listed as one of the assets belonging to the deceased herein a property known as Dagoretti/Kangemi/586 which is a totally different parcel of land. The applicant has not demonstrated what if any connection there is between the two (2) parcels of land.
20. In any event, any claim to land can only be litigated in the Environment and Land Court and not in the Probate Court.
21. Finally, I find no evidence to show that the applicants late husband is the deceased referred to in this cause. The applicant will have to file a separate succession cause in respect of her late husband.



22. In conclusion, I find no merit in this application. The same is hereby dismissed in its entirety. Each party to pay its own costs.

**DATED IN NAIROBI THIS 28TH DAY OF OCTOBER 2022.**

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**MAUREEN A. ODERO**

**JUDGE**

