



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Anna Wanjiku Kungu (Deceased) (Succession Cause  
E2568 of 2021) [2022] KEHC 14934 (KLR) (Civ) (28 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14934 (KLR)

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

**CIVIL**

**SUCCESSION CAUSE E2568 OF 2021**

**MA ODERO, J**

**OCTOBER 28, 2022**

**RULING**

1. Before this court for determination is the summons dated November 15, 2019 by which the applicant Hezekiah Kungu Kinuthia seeks the following orders:-
  1. That this honourable court be pleased to grant preservative orders restraining the proposed executor from alienating, transferring, selling and disposing the property/assets of the deceased's estate in any manner whatsoever pending the hearing and determination of this suit.
  2. That this honourable court be pleased to grant an order to compel the proposed executor to provide accounts of all income generated from the assets of the deceased from the time of death and to be subjected to independent accounting audit at the expense of the estate.
  3. That this honourable court be pleased to grant an order that any income generated from the deceased's estate be deposited in an interest generating account where all beneficiaries are signatories and any withdrawals from the said accounts be done with authority from court and the consent of all beneficiaries of the estate.
  4. Costs of this application be borne by the respondent herein."
2. The application was supported by the affidavit of even date sworn by the applicant.
3. The respondent Hannah Wanjiku Kinuthia opposed the application through her replying affidavit dated April 27, 2022. The application was canvassed by way of written submissions. The applicant filed the written submission dated July 4, 2022 whilst the respondent relied upon her written submissions dated April 27, 2022.



## Background

4. This succession cause relates to the estate of the late Anna Wanjiku Kunguwho died on August 21, 2021. It is alleged that the deceased left a written will dated January 26, 2021. The respondent Hannah Wanjiku Kinuthia was named in the Will as executrix.
5. However the applicant who claims to be the husband (widower) of the deceased filed a citation to propound a document as a will dated October 15, 2021. Basically, the applicant challenges the validity of the document purported to be the last will of the deceased. He asks that the court declare that the deceased died intestate and further prays that letters of administration intestate be granted to him as the widower.
6. The respondent who is a granddaughter of the deceased insists that the written will dated January 26, 2021 is a genuine document. Though the respondent admits that the deceased was married to the applicant, she states that the couple had been estranged for a long time and that the applicant took up other wives after the separation of the couple. She urges the court to dismiss this application.

## Analysis and Determination

7. I have carefully considered the application before this court, the reply filed by the respondent as well as the written submissions filed by both parties.
8. Before considering the merits of the application, I note the respondents on her replying affidavit revealed that there is another Succession Cause No 137 of 2021 filed in the High Court in Kiambu regarding the estate of the same deceased person. A copy of the petition dated November 9, 2021 filed by the respondent in the High Court at Kiambu is annexed to the replying affidavit (annexture 'HWK-1'.
9. Given the existence of the case which had been filed earlier in Kiambu High Court, the present matter is clearly sub-judice.
10. Section 6 of the [Civil Procedure Act](#) bars any court from engaging in matters *sub judice* before them. It provides as follows:-

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”
11. In light of the fact that a succession cause relating to the same estate has already been instituted in the Kiambu High Court this application ought to have been filed at Kiambu. If this court were to proceed to determine the application then there exists the very real risk of a contrary decision and/or determination being reached in the Kiambu succession case. This would only lead to chaos and confusion in the legal system.
12. The deceased hailed from Kiambu County. The property in issue is located in Kiambu County. There already exists a succession cause filed in Kiambu. I find no reason why this court should entertain the present application.



13. In my view this matter ought to be transferred to the High Court at Kiambu both for expedition and good order. In *Rapid Kate Services Ltd v Freight Forwarders Kenya Limited & 2 others*[2005] KLR Hon Justice Emukule (Retired) stated as follows:-

“Whereas under rule 5(2) of order 46 the court has a wide and flexible discretion to order that a case be tried in a particular place, that discretion may however be exercised upon cause being shown, and that cause shall have regard to the convenience of the parties, and of the witnesses, the date of when the trial shall take place, and the circumstances of the case. The court’s power to transfer proceedings from one court to another is a useful corrective to ensure that proceedings wherever began or whatever forum the plaintiff has initially chosen should be dealt with or heard or determined by the court most appropriate or suitable for those proceedings. When making or refusing an order for transfer the court will have regard to the nature and character of the proceedings the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice....” (own emphasis)

14. For the above reasons, I direct that this matter be and is hereby transferred to the High Court in Kiambu for consolidation with Kiambu Succession Cause No 137 of 2021 Estate of Anna Wanjiku Kungu (Deceased) for hearing and determination of the application dated November 15, 2019. This being a family matter I make no orders on costs.

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

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**MAUREEN A. ODERO**

**JUDGE**

