

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 568 OF 2008

IN THE MATTER OF THE ESTATE OF JOHNSTONE MOSES MIYA NGANYI (DECEASED)

ROSE KIHENZANI EBOYA.....APPLICANT

VERSUS

DORAH AWINJA MIYA.....RESPONDENT

RULING

1. By a consent of the parties, the applicant's daughter E.A.M and the respondent's son J.N.M. were to undergo a sibling DNA test at an institution to be agreed upon.

2. The said consent was adopted as order of this court on the 25th of February 2019.

3. The order was issued on the 7th of March 2019 and served upon the Government Chemist, who in turn upon holding discussions with the parties gave an opinion on two alternatives and indicated preference of the 2nd options. The options were; to exhume the remains of the deceased which option would have a significant level of degeneration due to lapse of time or option of sampling of DNA from biological mothers and all their biological children to allow for wider gene pool for better comparison.

The Chemist preferred the second option.

4. The Respondent's counsel had no difficulty with the opinion expressed, however Mr. Ondieki for the Applicant wanted the net cast wider for the reason that the children of the Respondent were all male. He was of the view that female genes from the deceased side be included to allow "plausible and verifiable gene extraction.

5. Having considered the sentiments by counsel for both sides I am inclined to go along with the expert opinion of the Government Chemist to have the DNA test being carried with all biological mothers and their children to enhance accuracy of the results. I see no cause to invite third parties for the test.

6. Consequently, I direct that **Rose Kihenzani Eboya and Esther Ayona Miya together with Dorah Awinja Miya, Jacob Nganyi Miya and Daniel Okore Libale** do submit to the DNA test with Government Chemist at a date to be agreed upon and not later than 15 days from the date hereof.

Dated and Delivered in Nairobi on this 31ST day of OCTOBER, 2019.

ALI-ARONI

JUDGE