



**In re Estate of Njoroge Kimani (Deceased) (Family Appeal  
E012 of 2024) [2025] KEHC 1589 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1589 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
FAMILY APPEAL E012 OF 2024  
JM NANG'EA, J  
FEBRUARY 21, 2025  
IN THE MATTER OF THE ESTATE OF NJOROGE KIMANI (DECEASED)**

**BETWEEN**

**HANNA WANJIRU MWANGI ..... APPELLANT**

**AND**

**LEAH NYAMBURA WAMBUI ..... RESPONDENT**

**RULING**

1. By Notice of Motion dated 18<sup>th</sup> August, 2024 the Appellant prays for orders as hereunder;
  1. Spent
  2. Spent
  3. Spent
  4. That an order of injunction does issue barring any further implementation of the grant issue and confirmed on 28<sup>th</sup> October 2022 by the trial court in favour of the respondent, pending the hearing and determination of the appeal.
  5. That a preservatory order do issue restraining the respondent either by herself, her agents, or any other person acting on her authorization or control from intermeddling with the estate of the deceased, pending the hearing and determination of the appeal.
  6. That the Honourable Court be pleased to issue an order of stay of the ruling and consequential orders issued on 18/7/2024, pending the hearing and determination of the appeal.
  7. That the honourable court issues any other order that may be just and in the interest of preservation of the estate of the deceased, pending the hearing and determination of the appeal.



8. That the costs of this application be in the cause.
2. The Appellant swore an affidavit in support of the Motion.
3. The Respondent opposes the application vide affidavit evidence in reply.
4. The Appellant avers that she and the Respondent are widows of the deceased herein. She faults the lower court for allegedly unlawfully disinheriting her and her daughter by its ruling delivered on 18<sup>th</sup> July 2024. She adds inter alia that the respondent would not suffer prejudice if the impugned ruling is stayed pending hearing and determination of her appeal which she claims to have merit. She strenuously contends that her application for Revocation of Grant which the court dismissed was not opposed as no reply was filed.
5. The Respondent retorts in her affidavit evidence that the application is premature, baseless, incompetent and otherwise an abuse of the court process not meriting her conclusive response. She contends that the Appellant has not proven that she is the deceased's widow and asserts that she was the only wife of the deceased having "cohabited" with him since the year 2003. According to the Respondent, indication on the Appellant's daughter's Birth Certificate that the deceased was her father is not evidence of paternity.
6. The court is therefore told inter alia that the Appellant is not entitled to the deceased's estate. The Respondent also wants the court to expunge paragraphs 4, 5, 6 and 7 of the Appellant's Affidavit on the ground that they offend Order 19 of the Civil Procedure Rules, 2010 for unwarranted attack on the Presiding Magistrate.
7. Learned Counsel for the parties filed Written Submissions. The Appellant in her brief Submissions through her advocates relies on the famous case of *Giella v Cassman Brown & Co.* which enunciates principles guiding the court in determination of temporary injunction applications. I will set out the principles later in this ruling.
8. The Respondent submits that the onus of proving marriage is on the party claiming its existence (see *Njoki v Mathara & others* Civil Appeal No 71 of 1989 (UR) cited in support of this submission). The Appellant has not therefore shown that she is recognized as a wife of the deceased in terms of the provisions of Section 3 of the Law of Succession Act which defines "spouse" as husband or wife or wives recognized under the Marriage Act, 2014, according to the Respondent. No certificate of marriage was produced by the Appellant and so the Respondent argues that none existed between the Appellant and the Deceased.
9. Relying on Re Estate of Waitbaka Kubi (Deceased) [2019] eKLR the Respondent insists that she obtained the Grant lawfully pointing out that DNA profiling was not done to confirm the Appellant's daughter's paternity. Birth Certificates are not the only proof of paternity as per NEO v HWK [2018] eKLR, it is submitted by Counsel. There is further no proof that the Appellant and her child were maintained by the deceased immediately prior to his death and so they are not dependants listed under Section 29 of the Law of Succession Act as per Counsel Submissions. The Appeal is accordingly dismissed as not arguable.
10. The Respondent takes issue with disparaging remarks against the trial court. She cites the Supreme Court's decision in Shollei & another v JSC & another (Petition No 34 of 2014) [2018] KESC 42 (KLR) (3 July 2018) (Ruling) which deprecated such conduct by litigants.
11. Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, are further relied upon giving the court jurisdiction to make orders that are expedient in the interest of



justice including temporary injunction/preservatory orders and to prevent abuse of the court process as amplified in *Estate of George M'Mboroki (Deceased)* [2008] eKLR.

12. I have considered the rival arguments. Both parties claim to be widows of the deceased. The substance of the Appellant's application is a temporary order of injunction pending hearing and determination of the appeal. The famous case of *Giella v Cassman Brown & Company* the Appellant alluded to has long settled applicable principles in determining whether or not to grant this remedy. The principles are; Firstly, the applicant must show a prima facie case with a probability of success. Secondly, the applicant should also demonstrate that irreparable loss will result if injunction is not ordered. Lastly, the Court, where in doubt, will determine the application on a balance of convenience. The Applicant is required to surmount the hurdles sequentially (see *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR).
13. In the case of *Mrao v First American Bank of Kenya Ltd & 2 others* (2003) eKLR 125 a prima facie case was defined as one which on the material presented to court or a tribunal a conclusion can reasonably be reached that the applicant's right has been infringed as to call for an explanation or rebuttal.
14. The Appellant exhibits her area Chief's letter dated 21<sup>st</sup> April 2022 purporting to confirm that she was the deceased's wife and that her daughter (B. N.) was the deceased's child. She also contends that her application dated 30<sup>th</sup> January, 2023 for Revocation of Grant was never opposed yet the lower court dismissed it while suo motu irregularly adopting a reply the Respondent had given in a different application that had been determined. The contested Ruling of the lower court indeed confirms this averment and the court gave its justification for the approach it adopted.
15. The Respondent rejects the Appellant's contestations maintaining that she and her daughter are not lawful beneficiaries of the estate.
16. I am satisfied that the Appellant has established a prima facie case with a reasonable chance of success in the Appeal. There is evidence suggesting that she was a wife of the deceased and it is common ground that her daughter was given the deceased's name. These circumstances alone show that the appeal is not idle. I find that to the contrary the appeal raises arguable issues that need to be ventilated in the hearing of the appeal.
17. The Appellant is claiming inheritance which is a very sentimental matter. It is not shown that were the properties comprising the deceased's estate to be alienated, the Respondent would be able to compensate the Appellant if she succeeds. The latter would therefore suffer irreparable loss if the estate is not preserved until determination of the appeal.
18. In light of the court's findings on the first and second limbs of *Giella v Cassman Brown & Company supra*, it is unnecessary to determine the question of the balance of convenience and to whom it tilts.
19. Before penning off, I note that the Respondent has urged the court to expunge paragraphs 4, 5, 6 and 7 of the Appellant's affidavit for allegedly infringing the law. The averments in the stated paragraphs impute dishonesty on the part of the Magistrate (Hon. Aloyce Peter Ndege SPM) whose ruling is the subject of this appeal. I agree with the Respondent that however strongly the Appellant is dissatisfied with the court's decision it is not open for her to question the Honourable Magistrate's integrity in arguing her application. Such conduct has been deprecated by Superior Courts including the Supreme Court in the *Sbollei Case supra*. I will, nevertheless, decline to expunge the impugned averments as they have not and will not influence this court in its decision.
20. The upshot is that the application is allowed as follows:-



1. That an order of injunction issues barring any further implementation of the Grant issued and confirmed on 28<sup>th</sup> October 2022 by the trial court in favour of the respondent, pending the hearing and determination of the appeal.
2. That a preservatory order issues restraining the Respondent either by herself, her agents, or any other person acting on her authorization or control from transferring, disposing of or in any other manner whatsoever interfering with the estate of the deceased, pending the hearing and determination of the appeal.
3. That the prayer for stay of the lower court's ruling is declined as the order is a negative one dismissing the Appellant's application.

21. The costs of the application shall abide the appeal.

**J. M. NANG'EA, JUDGE.**

**RULING DELIVERED THIS 21<sup>ST</sup> DAY OF FEBRUARY, 2025 IN THE PRESENCE OF:**

Mr. Kihoro Advocate for the Appellant

Ms Njuguna Advocate for Ms Njigina Advocate for the Respondent

The Court Assistant (Jeniffer)

**J. M. NANG'EA, JUDGE.**

