



**In re Estate of Peter Karugu Guandai (Deceased) (Succession Cause
1931 of 2009) [2025] KEHC 2053 (KLR) (Family) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2053 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1931 OF 2009
EKO OGOLA, J
FEBRUARY 6, 2025
IN THE MATTER OF THE ESTATE OF PETER KARUGU GUANDAI (DECEASED)**

BETWEEN

MARY NJERI MBURU APPLICANT

AND

WINIFRED NYAMBURA KARUGA RESPONDENT

RULING

1. The Summons before this court is dated 8th September 2023. The applicant prays for the following orders:-
 - a. That the orders given by this court on 3rd July 2023 be reviewed and varied.
 - b. That the honourable court vary orders to dispense with DNA testing for JAM.
 - c. That this honorable court do make such other or alternative orders as will meet the interest of justice.
 - d. That the cost of this application be in the cause.
2. The application was based on the grounds set out therein and the applicants supporting affidavit. The applicant deposed that MGM, her son took a DNA test as ordered by the court however, the officer at KEMRI informed them that a test for a female child without the deceased sample and using the deceased sister would be inconclusive. The applicant did not annex evidence of this claim.
3. The applicant further deposed that this is a new and important matter that was unknown to the parties and the court at the time of making the order, namely that in the absence of a sample from the deceased, it is not possible to get a conclusive result for the minor's test.



4. According to the applicant, since there is no DNA from the deceased, there is no need to subject the minor to a test that will not be conclusive and further subject the minor to unnecessary psychological trauma.
5. The respondent opposed the application vide a Replying affidavit. She deposed that the officer at KEMRI stated that a DNA test 'may not pass the threshold for a conclusive finding on paternity.' The respondent deposed that the officer never said that the test would not be conclusive.
6. Parties canvassed the summons by way of submissions. I have read and considered them.

Determination

7. I have read and considered the summons, the rival affidavits, submissions, and the entire record of the court. As stated above, the only provisions of the *Civil Procedure Rules* imported to the *Law of Succession Act* are orders dealing with service of summons, interrogatories, discoveries, inspection, consolidation of suits, summoning and attending witnesses, affidavits, review and computation of time.
8. Order 45 relating to review is one of the *Civil Procedure Rules* imported into succession practice by Rule 63 of the *Probate and Administration Rules*. An application for review in succession proceedings can be brought by a party to the proceedings, a beneficiary to the estate or any interested party. However, the application must meet the substantive requirements of an application brought for review set out in Order 45 of the *Civil Procedure Rules*. To be successful, the applicant must demonstrate to the court that there has been the discovery of a new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed. Secondly, if he can demonstrate to the court that there has been some mistake or error apparent on the face of the record. The third ground for review is worded broadly: an application for review can be made for any other sufficient reason.
9. According to the applicant, the information that without the deceased sample, a conclusive test cannot be carried out on a female child is new evidence. However, the applicant did not attach an official letter from KEMRI to prove this. From the foregoing, I dismiss the Summons dated 8th September 2023. I direct that the applicant adheres to the Ruling of this court dated 13th July 2023 and results filed within 14 days. Costs be in the cause.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF FEBRUARY 2025

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E.K. OGOLA

JUDGE

In the presence of:

Mr. Koech for the Applicant

N/A for the Respondent

Gisiele Muthoni Court Assistant

