



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Mariam Tapsiru Kitumbu (Succession Cause
16 of 2001) [2025] KEHC 2681 (KLR) (3 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2681 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

SUCCESSION CAUSE 16 OF 2001

G MUTAI, J

MARCH 3, 2025

IN THE MATTER OF THE ESTATE OF MARIAM TAPSIRU KITUMBU

RULING

1. The application before me is dated 16th December 2024. In the said application, the applicant seeks to have the name of his mother substituted with his as the administrator of the Estate of Mariam Tapsiru Kitumbu (deceased).
2. The grounds upon which Omar Kiplangat Abdalla seeks the said orders are that his mother, Rukia Chepketer Chemobor (who is deceased), was an administrator of the estate of Mariam Tapsiru Kitumbu, together with her sister Zainab Chemalit Said. Further, at the time her mother died, the estate had not been fully administered. He also sought to have the estate valued so that it could be shared equally.
3. Although Mr Abdalla acknowledged that his deceased mother had a daughter, who is his sister, and thus equally entitled to the estate as he is, he did not seek her consent nor tried, in any way, to involve her.
4. Quite predictably the application was opposed by Ms Hadija Chepkoskey Kemmay. Ms Hadija, in her objection, stated that the applicant couldn't administer the estate of his grandmother when there was an aunt who had co-administered it with their mother and who remained the sole surviving administrator. She further stated that the application was filed by the applicant to frustrate the determination of the Mombasa Kadhi Succession Cause No E88 of 2022 before Kadhi's Court in Mombasa in which the administration of the estates of their mother was being considered.
5. She stated through her advocate that her consent had not been obtained. The application erroneously referred to their aunt, Ms Zainab Chemalit Said, as the stepmother, whereas she was the only surviving daughter of their grandmother.
6. The application was canvassed through oral submissions before me on 11th February 2025.
7. I have considered the application and the responses thereto, as well as the oral submissions of the parties.



8. In my view, the application is completely bereft of merit for a number of reasons. Firstly, since the applicant and Ms Hadija have equal priority to inherit their mother's estate, the applicant should have obtained her consent before approaching the court. It would appear to me that the applicant failed to do so, as what he was trying to do was to steal a match on her. I say this for the reason I shall elucidate below.
9. Although there is a matter before the Hon Kadhi on the administration of their mother's estate, the applicant failed to mention this. In my view, the failure to do so was deceitful. What the applicant was trying to do was obtain an order that the Honourable Kadhi had, in his wisdom, not given him. By so doing, he was abusing the processes of this court.
10. Failure to disclose material information is a fatal defect. Court proceedings operate on the premise that parties will act in good faith and disclose all the relevant information the court needs to deliver justice. In the case of *Ruaba Concrete Co. Ltd et al. versus Paramount Universal Bank Ltd et al.*, HCCC No. 430 of 2002, the Court outlined the consequences which would follow as a result of non-disclosure of material information:-

“The duty is not to make full and fair disclosure of all material facts, the material facts are those which is material for the judge to know in dealing with the application as made, materiality is to be decided by the Court, and not by assessment of the applicant, and the applicant must make proper inquiries before making the application. The duty of disclosure therefore applies not only to any additional facts known to the applicant but also to any additional facts which he would have known if he had made such inquiries. The extent of the inquiries which will be held to be proper, and therefore necessary, must depend on all the circumstances of the case including: -

- a) The nature of the case the applicant is making when he makes the application.
 - b) The order for which the application is made and the probable effect of the order on the Defendant or the Plaintiff.
 - c) The degree of the legitimate urgency and the time available for the making of the inquiries.”
11. Although the applicant has tried to justify his actions as an attempt to procure the proper administration of the estate I see that kind of argument as nothing but weasel words.
 12. In any case, as the Kadhi's Court has jurisdiction since the deceased was a Muslim and the parties hereto profess the same religion, proceeding with this application when the same is before the Hon Kadhi would be res sub judice those proceedings.
 13. I am guided by the decision of the Supreme Court of Kenya in *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties)* [2020] eKLR where the apex court stated as follows:-

“The term ‘sub-judice’ is defined in *Black's Law Dictionary* 9th Edition as: “Before the Court or Judge for determination.” The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in



order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.”

14. From the foregoing it is evident that the application is one that must be dismissed. Thus, I find and hold that the motion has no merit; the same is for dismissal.
15. Dismissal of the application will not be injurious to the estate as there is a surviving administrator who will continue managing the estate of the deceased as the applicant and the respondent pursue the matter pending before the Kadhi.
16. The applicant has attempted to misuse the court process to procure for himself a grant of his grandmother’s estate to the disadvantage of his sister. This court ought to show its strong displeasure with his actions. Under the circumstances, I condemn the applicant to pay the respondent’s costs.
17. Orders accordingly

DATED AND SIGNED AT MOMBASA ON THIS 3RD DAY OF MARCH 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

No appearance for the Respondent;

Mr Omar Kiplangat Abdalla; and

Arthur – Court Assistant.

