



Namasake & another (Suing as the Administrator and Personal Representatives of the Estate of Kevin Simiyu Wafula (Deceased)) v Mabonga & another (Civil Appeal E151 of 2023) [2025] KEHC 3008 (KLR) (13 March 2025) (Judgment)

Neutral citation: [2025] KEHC 3008 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL APPEAL E151 OF 2023
REA OUGO, J
MARCH 13, 2025**

BETWEEN

EDWIN NAMASAKE 1ST APPELLANT

EUNICE NASIMIYU WAFULA 2ND APPELLANT

**SUING AS THE ADMINISTRATOR AND PERSONAL REPRESENTATIVES OF
THE ESTATE OF KEVIN SIMIYU WAFULA (DECEASED)**

AND

PETER WAFULA MABONGA 1ST RESPONDENT

WEST KENYA SUGAR COMPANY LIMITED 2ND RESPONDENT

*(An appeal arising from the ruling of Hon W.K. Onkunya (PM)
delivered on 1/11/2023 in Kimilili SPM Civil Case No E066 of 2021)*

JUDGMENT

1. The ruling of the trial court delivered on 1/11/2023 which allowed the Notice of Motion dated 22/12/2022, to the extent that the 1st respondent be enjoined in the proceedings as an interested party. The notice of motion had sought the following orders:
 - a. Spent
 - b. That pending the hearing and determination of this application there be stay of proceedings and delivery of judgment in this case due on 25/1/2023.
 - c. That the applicant, Peter Nafula Mabonga be joined as an interested party in this case and be allowed to participate in the proceedings thereafter.



- d. That the 1st respondent, Edwin Namasake be struck out of this proceedings in this matter as is stranger to the estate of the deceased.
2. The application was on grounds that the 1st respondent was the biological father of the deceased and Eunice Nasimiyu Wafula (“Eunice”) was the mother. While the Edwin Namasake (“Edwin”) was the current husband to Eunice, he was not the deceased’s father. The 1st respondent had obtained a grant ad litem in PMC Kimilili Succ Misc No E021 of 2021. He subsequently filed a plaint in Kimilili PMCC No 157 of 2021 but the same was struck out as being subjudice. The court noted that he should be enjoined in the matter that was before the lower court to protect his interest.
3. Edwin filed a response to the application claiming that he is the biological father of the deceased. In Bungoma CMC Succ Cause No 10 of 2021 they were granted letters of administration ad litem. They buried the deceased in their home after obtaining a burial permit. Eunice in her affidavit clarified that all the deceased’s children stay with the appellants.
4. The 1st respondent in a supplementary affidavit denied that the deceased’s children were living with the appellant. He averred that Eunice moved from his home to stay with Edwin after the deceased was born and attending upper primary. He pointed out that the deceased Kevin Simiyu Wafula took the name of the 1st respondent, Wafula as his Sir name.
5. The trial magistrate in her Ruling found as follows:

“In this case, the intended interested party claims to be the biological father of the deceased and a direct beneficiary to the estate of the deceased and is likely to be locked out if he is not enjoined to the proceedings. Having declared his interest, I find that it is desirable, for avoidance of multiplicity of suits, to have the intended interested party enjoined so the he can be bound by the decision of this court”
6. The appellants dissatisfied with the finding of the subordinate court has filed this instant appeal raising the following grounds:
 1. That the Hon Magistrate erred in both law and fact when she failed to find that the respondent had not met the threshold to be enjoined as an interested party hence occasioning a miscarriage of justice.
 2. That the Hon Magistrate erred in both law and fact when she held that the 1st appellant was a stranger to the proceedings and thereby struck out his name without regard that 1st appellant had obtained a joint grant with the 2nd appellant vide Bungoma CMCC No 10 of 2021 and which grant is still in force, thereby occasioning a miscarriage of justice.
 3. That the Hon Magistrate erred in both law and fact when she failed to find out and hold the 1st respondent is a busy body whose interest is purely money/financial gain that will be awarded to the estate of the deceased at the expense of the deceased’s minor children taking into account that he has instituted Kimilili SPMCC No E157 OF 2021 over the same cause of action, thereby occasioning a miscarriage of justice.
 4. That the Hon Magistrate erred in both law and fact when she failed to apprehend, appreciate, take into account and apply her mind properly to the provisions of Order 1 Rule 10 of the Civil Procedure (Amendment) Rules 2020 hence occasioning miscarriage of justice.



5. That in her ruling/order/decision, the same depict that the Hon Magistrate failed to apprehend that the appellant's submissions and case law cited thereto hence occasioning a miscarriage of justice.
6. That in her ruling/order/decision by the Hon Magistrate was premised on wrong reasoning and misapprehension of the law governing joinder of parties hence occasioning miscarriage of justice.
7. The appellant in his submissions argue that he demonstrated that he was the deceased's biological parent. The 1st respondent suit in Kimilili SPMCC No 157 of 2021 had already been struck out confirming his interest. The 1st respondent's prayer to be enjoined as a party to the suit ought to have failed. They cited the case of Skov Estate Limited & 5 Others v Agricultural Development Corporation & Another [2015] eKLR and the case of Joseph Njau Kingori v Robert Maina Chege & 3 Others [2002] eKLR.
8. The respondent on the other hand argue that the deceased was his son and he had been issued with a limited grant. Therefore, he had proved that he has a recognizable state (and therefore standing) in the matter; the court had discretion to admit him; and that the he had an identifiable stake or legal interest or duty in the proceedings and may not be directly involved in the litigation. He argued that he proved that he was a necessary party.

Analysis And Determination

9. I have carefully considered the appeal and the rival submissions and the only issue is whether it was proper for the trial magistrate to admit the 1st respondent as an interested party. In Communications Commission of Kenya and 4 Others v Royal Media Services Limited & 7 Others Petition No. 15 OF [2014] eKLR the court held as follows:

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. Similarly, in the case of Meme Republic, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- (i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) Joinder to prevent a likely course of proliferated litigation.

We ask ourselves the following questions:

- a) what is the intended party's state and relevance in the proceedings and
 - b) will the intended interested party suffer any prejudice if denied joinder.?”
10. In this case, the 1st respondent claims to be the father to the deceased and has instituted succession proceedings regarding the estate and obtained a limited grant of letters of administration. Interestingly, the appellants were equally issued with a limited grant to file suit.



11. Therefore, it is clear that Edwin Namasake and the 1st respondent are both claiming to be the biological father of the deceased. However, this issue can only be resolved in the succession cause and could not be resolved by the trial magistrate in the civil suit. It is the succession court that can determine who the real beneficiaries of the deceased were including his parents. Since the deceased's beneficiaries are yet to be determined, that is, whether the deceased's father was Edwin Namasake or the 1st respondent, it was prudent to enjoin the 1st respondent as interested party and ensure that he suffers no prejudice.
12. Consequently, I find no merit in the appeal and the same is hereby dismissed. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 13TH DAY OF MARCH 2025

R.E. OUGO

JUDGE

In the presence of:

Miss Wanyama h/b for Mr. Bw'Onchiri- For the Appellant

Respondent - Absent

Wilkister -C/A

