



REPUBLIC OF KENYA



**In re Estate of Gedion Mwinzi Kinama (Deceased) (Succession Cause
773 of 2012) [2024] KEHC 112 (KLR) (17 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 112 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 773 OF 2012
FR OLEL, J
JANUARY 17, 2024**

BETWEEN

JETHROL KASYOKA MWINZI 1ST PETITIONER

CHRISTINAH MUTHINI NDAMBUKI 2ND PETITIONER

AND

AGNES MUENI MWINZI RESPONDENT

RULING

1. The application before this court is the Amended summons for Rectification of Grant application dated 9th August 2023 brought pursuant to provisions of Section 47 and 71 of the *Succession Act*, and Rule 49 and 73 of the *Probate and Administration Rules*. The applicant seeks for orders that;
 - a. That the schedule of distribution attached to the summons dated 27th January 2023 be amended to substitute the now deceased beneficiary Benson Mwinzi Kinama with his surviving wife Agnes Mueni Mwinzi the applicant herein.
 - b. That upon grant of prayer 1, the grant be confirmed as per the attached schedule of distribution.
 - c. That costs be in the cause.
2. The application is supported by a supporting affidavit of the applicant Agnes Mueni Mwinzi dated 9th August 2023, where she depones that the said Benson Mwinzi Kinama, who was an administrator herein and also a beneficiary died on 5th May 2017. After his death one Christina Muthini Ndambuki was appointed in his place as co administrator to the estate. The applicant was the lawful and surviving wife of the deceased and therefore seeks to be substituted as his beneficiary to safeguard the interests of his (the deceased) beneficiaries. No prejudice would be occasioned upon the respondent's and it was in the wider interest of justice to allow the prayers as sought.



3. This application is opposed by the 1st Petitioner/Respondent Jethrol Kasyoka Mwinzi through his replying affidavit dated 26th September 2023. The 1st respondent aver that the applicant is not a beneficiary of the Estate of Gideon Mwinzi Kinama (Deceased), but admitted that indeed she was the wife/widow of the late Benson Mwinzi Kinama. Be that as it may, the applicant did not have an automatic right to become the beneficiary to his estate.
4. It was the respondent's position that for the applicant to have a valid claim to succeed her husband, she ought to apply for letters of administration to his estate, before she could be allowed to be enjoined herein. She thus did not have the locus standi to seek the orders sought.

Analysis & Determination

5. I have carefully considered the summons, Supporting Affidavit, and the Respondent's replying affidavit and find that the only issue for determination is whether the Applicant should be substituted in place of her late husband Benson Mwinzi Kinama and the property bequeathed to him be assigned to her.
6. The undisputed facts of this case are that the applicant is the widow of the late Benson Mwinzi Kinama, who is deceased and in law she ranks in priority to acquire his interest in this estate. It is also noted that her two sons have also signed the consent allowing her to take charge of her late husband's interest. Be that as it may the respondents are right to point out that since she is not a direct beneficiary to the estate of her father in law, she cannot be directly substituted and allowed to take over her husband's interest therein without undertaking the legal process to become his legal administrator after which she can claim his stake herein.
7. Ideally distribution having been agreed upon, this objection ought not to have been raised, but as it is it cannot be ignored. I do therefore find that the applicant is entitled to inherit her husband's share of the estate of Gedion Mwinzi Kinama and allow prayer (1) and (2) of the Amended summons dated 9th August 2023. But this order will remain in abeyance/suspended until the applicant files and undertakes the process to be appointed as the legal administrator to the estate of the late Benson Mwinzi Kinama.
8. In the meanwhile, the applicant and her children will be allowed unhindered access, use and benefit of the said properties as earlier distributed.
9. Each party will bear their own costs.
10. It is so ordered.

RULING WRITTEN, DATED AND SIGNED AT MACHAKOS THIS 17TH DAY OF JANUARY, 2024.

FRANCIS RAYOLA OLEL

JUDGE

Delivered on the Virtual Platform, Teams this 17th day of January, 2024.

In the presence of:

Mr Muema for Applicant

No appearance for respondent

Court assistant – Susan/Sam

