



REPUBLIC OF KENYA



**In re Estate of Wilson Mburu Gataru (Deceased) (Succession Cause
1493 of 2013) [2024] KEHC 7989 (KLR) (Family) (21 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7989 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 1493 OF 2013

PM NYAUNDI, J

JUNE 21, 2024

IN THE MATTER OF THE ESTATE OF WILSON MBURU GATARU (DECEASED)

BETWEEN

ELIZABETH WAIRIMU NJUGUNA 1ST APPLICANT

KENNEDY GATURA NJUGUNA 2ND APPLICANT

AND

JOYCE WAIRIMU KIRIGA RESPONDENT

RULING

1. The deceased herein Wilson Mburu Gataru died intestate on 22nd November 2010. On 24th March 2011, his wife, Elizabeth Wairimu Njuguna (hereinafter the 1st applicant) and his son, Kennedy Gatura Njuguna (the 2nd applicant) petitioned for a grant of letters of administration. The grant was issued to them on 20th September 2011 and was confirmed on 29th May 2012.
2. The Respondent's attempt to revoke the grant was revoked, *vide* ruling dated 9th May 2019 by Justice Farah S.M. Amin (as she was then). This ruling was successfully reviewed with an order that the matter be heard *de novo*.
3. The Application for determination is dated 17th April 2015 with the applicants seeking: an order that the Objector's children JWG and BMG be ordered to undergo a DNA test together with the 1st Applicant's children to confirm whether they are the biological children of the deceased.
4. It is submitted that it is in the interests of justice that the paternity of the minors be determined. The Respondent filed grounds of opposition dated 3/11/2015. The Court directed that the Application be canvassed via written submissions.



5. The Applicants submissions are dated 27th February 2024. Counsel contended that DNA test was the only effective way of determining paternity of the Objector's children. In support of this proposition, counsel relied on the decision in Nairobi High Court Succession Cause No. 123 of 2017; in the matter of the Estate of the late J.K.

Analysis And Determination.

6. The only issue for determination is whether the summons dated 17th April 2015 is merited.
7. From the pleadings of both parties, it is conceded that the 1st applicant's children were sired by the deceased. It is possible to determine paternity by undertaking a sibling DNA testing to confirm whether or not they are of the same father.
8. Paternity is at the center of the dispute. It will not prejudice the Respondent and her children at all as she has not offered an alternative on how to resolve the impasse. I am persuaded by the reasoning of Hon. Eric Ogola J in *re Estate of John Samwel Gachuma Mbugua (Deceased)* (Succession Cause 687 of 2020) [2023] KEHC 25409 (KLR) (Family) (14 November 2023) (Ruling) where he cited with approval the decision in the High Court South Africa, *Bother vs Dreyer* (now Moller) High Court of South Africa (Trans Vaal Province) Case No.4421/08(unreported) and Judge J.R. Murphy stated;

“In short, I agree with those judges and commentators who contend that as a general rule the more correct approach is that the discovery of the truth should prevail over the idea that the rights to privacy and bodily integrity should be respected. - see Kemp. *Proof of Consent or Compulsion* (1986) 49 THRHR 271 at 279-81. I also take the position, and I will return to this more fully, later, that it will most often be in the best interest of a child to have any doubts about the paternity resolved and put beyond doubt by the best evidence”

9. Accordingly, the application is merited and therefore allowed with the following orders
 - a. Sibling DNA examination shall be conducted to determine paternity of the objector's children namely JWG and BMG. Samples shall be extracted from the 2nd Applicant for testing.
 - b. The samples shall be extracted and test undertaken at Kenya Medical Research Institute(KEMRI), Nairobi within 14 days from the date hereof
 - c. That the Kenya Medical Research Institute to submit their report within 30 days from the date of receipt of samples.
 - d. The Cost of the test shall be met by the Estate of the Deceased
 - e. No order as to costs

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 21ST DAY OF JUNE, 2024.

P M NYAUNDI

JUDGE

