



**In re Estate of Kimani Njuguna alias Simon Kimani Njuguna (Deceased) (Succession Cause 812 of 2015) [2024] KEHC 7491 (KLR) (Family) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7491 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 812 OF 2015  
HK CHEMITEI, J  
JUNE 20, 2024  
IN THE MATTER OF THE ESTATE OF KIMANI NJUGUNA  
ALIAS SIMON KIMANI NJUGUNA (DECEASED)**

**BETWEEN**

**GRACE GAITAU KIMANI ..... APPLICANT**

**AND**

**HANNAH NYAMBURA KIMANI ..... RESPONDENT**

**RULING**

1. This ruling relates to the application dated 28<sup>th</sup> September, 2022 filed by Grace Gaitau Kimani seeking for orders that:
  - (a) Spent.
  - b. Pending the hearing and determination of this application, this Honourable Court be pleased to issue an order staying further proceedings of all the pending applications in this matter.
  - (c) This court be pleased to quash and or set aside all the proceedings in this matter.
  - (d) Upon quashing and or setting aside all the proceedings in this matter, this court be pleased to call the Will of the deceased dated 30<sup>th</sup> May, 2013 for consideration.
  - (e) This honorable court be pleased to issue directions that the Will of the deceased dated 30<sup>th</sup> May, 2013 be followed to its latter.
  - (f) The parties be at liberty to petition for the letters of administration of the estate of the deceased.
  - (g) Costs be in the cause.



2. The application is supported by affidavit sworn by Grace Gaitau Kimani on 28<sup>th</sup> September, 2022 where she avers inter alia that she is the deceased's second wife and has not been aware of the existence of this case or any other case relating to the deceased's estate. She said that she has not participated in any proceedings in any court in respect to the deceased's estate nor has she filed any applications pertaining to this matter.
3. She also denies engaging in the services of any advocate, individuals and/or any other agent to file and or bring up any proceedings before this honorable court or any other court in respect to the estate of the deceased.
4. She deponed that any pleadings in this matter were filed without authority, knowledge and instructions from her and any document purportedly signed by her in any application and or affidavit is a forgery as she was not aware of the existence of this matter.
5. The application is opposed vide replying affidavit sworn by Hannah Nyambura Kimani on 20<sup>th</sup> June, 2023. She states, inter alia that the instant cause was filed by the Applicant as the petitioner in the year 2015 through Kanyi Kiruchi & Company Advocates and she signed all the requisite pleadings. That she has always taken an active role as the petitioner and party in this matter.
6. The Grant in this matter was issued to the Applicant on 30<sup>th</sup> May, 2013 and it was revoked on grounds of fraud, illegality and misrepresentation vide ruling delivered by Hon. Judge M. W. Muigai on 5<sup>th</sup> September, 2016 and a fresh grant, citing all the beneficiaries, ought to be filed. She prayed that this matter be transferred to Muranga High Court where the bulk of the estate was.
7. The Applicant has filed written submissions dated 13<sup>th</sup> July, 2023 seeking that her application dated 28<sup>th</sup> September, 2022 be allowed to enable the parties to start the administration of the estate of the deceased afresh.
8. The Respondent has filed written submissions dated 21<sup>st</sup> July, 2023 seeking that this file be closed so that the parties can file a fresh cause before the Murang'a High Court or this cause be transferred to Murang'a High Court for hearing and determination.

## **Background**

9. This matter emanates from the ruling delivered by Hon. Judge M. W. Muigai on 5<sup>th</sup> September, 2016 which ordered as follows:
  - 1) The Certificate of Confirmed Grant issued on 17<sup>th</sup> May, 2016 is hereby revoked forthwith and all subsequent Orders, Processes and Transfers and Disposals of any of the properties that comprise of the deceased's estate outlined in the Will of the deceased and or the Petition shall revert to the deceased's name forthwith.
  - 2) If any transfers have been carried out pursuant to the irregular and illegal certificate of confirmation of grant, the said properties shall be held in trust for all beneficiaries of the deceased's estate until further order of this Court.
  - 3) The deceased's estate shall be preserved under Section 45 of the *Law of Succession Act*, Chapter 160 of the Laws of Kenya until hearing and determination of this matter.
  - 4) The Deputy Registrar Family Division shall place this matter before the Head of Family Division Hon Justice A. Muchelule with a view to fully getting to the bottom of the matter and unearthing the truth on the irregularity in issuance of court orders.



- 5) The Application shall be served to all beneficiaries.
- 6) This Court file shall be kept in the Strong Room.

### **Analysis and Determination**

10. The deceased left a Will dated 30<sup>th</sup> May, 2013 naming John Karuru Kamau as the executor. The Will is elaborate on the mode of distribution of his estate. The Applicant, Grace Gaitau Kimani, obtained the revoked grant aforementioned through fraud (as described in the ruling delivered by Hon. Judge M. W. Muigai on 5<sup>th</sup> September, 2016) and by purporting to be the executrix of the deceased's Will. She thereafter transferred several properties that form the deceased's estate to herself and third parties.
11. It is therefore preposterous and outright lies for the Applicant to feign ignorance of this matter in light of the ruling of this court stated above. I doubt whether the Applicant is aware that the court gave directions on how the estate ought to be administered and if she is aware she simply does not want to acknowledge.
12. Being the presiding court in this division my duty is simple and clear as directed by the ruling of 5<sup>th</sup> September 2016. As a matter of fact, I think both the Applicant and the Respondent and the beneficiaries went into slumber after the ruling. It appears to me that nobody is keen to have the estate distributed as per the Will.
13. Although the Applicant is complaining of these proceedings she acknowledges that the Will ought to be implemented to the latter.
14. I do not find any merit in the application and the same is hereby dismissed.
15. In the premises I hereby direct as hereunder.
  - (a) John Karuru Kamau through the firm of Kamotho Njomo & Co. Advocates are hereby directed within 30 days from the date herein to execute the deceased Will dated 30<sup>th</sup> May 2013 by having the Grant confirmed.
  - (b) Costs shall be in the cause.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 20<sup>TH</sup> DAY OF JUNE 2024.**

**H K CHEMITEI**

**JUDGE**

