



In re Estate of the Late David Waiganjo Koinange (Deceased) (Succession Cause 957 of 2020) [2024] KEHC 7441 (KLR) (Family) (20 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7441 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

SUCCESSION CAUSE 957 OF 2020

HK CHEMITEI, J

JUNE 20, 2024

**IN RE ESTATE OF THE LATE DAVID WAIGANJO KOINANGE (DECEASED)
(SUCCESSION CAUSE 957 OF 2020) [2024] KEHC 7441 (KLR) (20 JUNE 2024)**

BETWEEN

CHRISTINE NJOKI THIONGO APPLICANT

AND

NANCY WAIRIMU WAIGANJO 1ST RESPONDENT

YVONE WANJIKU WAIGANJO 2ND RESPONDENT

AND

RITAH NDUKU OBJECTOR

SOPHIA MUKIA BINGA OBJECTOR

RULING

1. In her application dated 19th January 2024 the Applicant Christine Njoki Thiongo prays for the following orders that;
 - (a) Spent
 - (b) Spent
 - (c) Spent
 - (d) The court be pleased to issue an order directing the 1st 2nd and 3rd Respondents to pay school fees for Martin Jacob Mbiyu, and Vanessa Wambui Waiganjo as per the attached fees



structures/invoice and any antecedent need that might arise until completion of the studies or determination of the succession proceedings.

- (e) The court be pleased to issue orders directing the 1st, 2nd and 3rd Respondents to pay the Applicant a monthly upkeep of Kshs 160,000 pending the hearing and determination of the succession proceedings.
 - (f) That in the alternative and without prejudice to the above the court be pleased to issue an order directing among the leases, Peter Waihumbu Mungai, Rufas Hunja Kimari, Joseph Njeru Mutiga, James Nganga Nene, Lylux Kenya Ltd, Sahara city, Fiesta club, Red lion, Avanti's, Thika motor dealers, Ruaka villa, Big five, Ravers, Mamlaka chapel, La scada, Naishaks, Queens club, among other tenants to pay the rents directly to the Applicant.
 - (g) That further and in the alternative and without prejudice to the foregoing this court be pleased to order for appointment of an estate agent to collect and manage the estate on behalf of the beneficiaries.
 - (h) That the Deputy Registrar of this court in liaison with the OCPD Gigiri to supervise compliance with the orders issued above.
 - (i) That the Applicant be at liberty to apply for further orders and or directions as the court may deem fit to grant.
2. The Applicant prayed for the costs of the application.
 3. The application is premised on the lengthy grounds thereof as well as the Applicant's affidavit sworn on even date.
 4. The application has been opposed by the 1st Respondent Nancy Wairimu Waiganjo vide her replying affidavit sworn on 4th March 2024.
 5. The 2nd Objector Ritah Nduku Waiganjo vide her replying affidavit sworn on 28th February 2024 has also opposed the application.
 6. The 1st Objector has equally filed a preliminary objection dated 29th February 2024 in opposition to the application.
 7. The Applicant in response has filed a supplementary affidavit sworn on 4th March 2024.
 8. What runs across the application is the Applicant's prayers for the deceased estate to support and maintain the deceased children namely Elsie Wangari, Martin Jacob Mbiyu and Vanessa Wambui Waiganjo.
 9. The Applicant contents that the said children were born by the deceased and therefore despite his death the estate ought to be compelled to support. They are all in various academic levels in their lives and thus it is necessary that despite the absence of their father they need to continue with their education.
 10. She has further asked for general monetary upkeep for herself and the said children totalling Kshs 160,000 per month to cover rent, medical, clothing's among others.
 11. It is her case that the prayer sought cannot wait for determination of the succession proceedings herein despite the effort to fastrack it.
 12. On her part the 1st Petitioner avers that the application was generally meant to delay the quick conclusion of the matter and this court ought not to entertain it. That there were other applications which were halted to allow speedy resolution of this matter.



13. The 2nd Objector on her part opposed the application on the grounds that the same was basically reviewing the orders of the lower court in children's case Number 419 of 2008 between the deceased and the Applicant.
14. In her preliminary objection she argued that the matter was res judicata and ran foul the provisions of Order 45 rule 1 of the *Civil Procedure Rules*. The application therefore ought to be dismissed.

Analysis and determination

15. I have read carefully the application and the rival affidavits. I have in particular perused the preliminary objection and although it refers to the orders of the lower court dated 13th July 2009 and issued on 11th May 2021, the proper order in question is the one dated 23rd July 2008. The said order is between the deceased and the Applicant.
16. The order marked as annexure 3 refers to the minor Vanessa Ruth Wambui and Martin Jacob Mbiyu. It appears that the order sorted out the issue of Vanessa as far as her maintenance were concerned. The issue of Jacob was subject to a DNA analysis.
17. The DNA analysis was later abandoned as per the correspondences between the counsels on record. Thereafter nothing seemed to have progressed at the trial court and I think the deceased passed on.
18. There is no evidence that the said order was appealed against by either of the parties. The 2nd Objector in her replying affidavit has deponed that she has been supporting the said child Vanessa as directed by the trial court and as a matter of fact she has confirmed from school that there are no fees arrears.
19. Further that she increased the monthly deductions or contribution from Kshs 15,000 to Kshs 25,000 which she has duly continued to pay.
20. The above deposition by the 2nd Objector has not been seriously countermanded by the Applicant. Her only contention is that the Applicant should not be allowed to run and manage the estate without her input and at her own discretion.
21. I find that taking the totality of the evidence on board I agree with the Respondents that the proper place to agitate this matter ought to be at the children's court. This is for the simple reason that prior to his death the deceased had already and elaborately sorted out the issue of the children and specifically Vanessa. The issue of Jacob DNA seemed to have been abandoned going by the attached correspondences from their lawyers attached to the rival affidavits.
22. Since there is already a court order dated 23rd of July 2008 which was not challenged and which referred to the two children I think the parties ought to take the issue surrounding the children to case No 419 of 2008, Nairobi, children's court. For this court to make any determination over it without an appeal is overstretching its jurisdiction.
23. As a matter of fact, nothing stops the Applicant from seeking the orders therein including a review in the event that circumstances have changed. It is also worth noting that the 2nd Objector whether unilaterally or not has been paying Vanessa's fees and has even enhanced it from Kshs 15,000 ordered by the court.
24. As regards the other prayers for her upkeep, I have not been shown any evidence that the deceased was supporting her directly through payments of rent or clothing's. Her evidence simply stated that they had "a marital affair". This is too vague for her to seek support without further evidence.



25. Indeed, the reason why this court directed the parties to fastrack the matter was so that all the issues including marriages and support the deceased had including any dependants could be dealt with once and for all. It will be prejudicial to all the parties for the court to award the Applicant the rest of her prayers without taking viva voce evidence.
26. Since the court has already determined that the issue of the children be taken to the children's court I think the other issues including the Applicants interest ought to go to full trial.
27. Consequently, the court for the reasons stated above finds no merit in the application and the same is dismissed with no order as to costs.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 20TH DAY OF JUNE 2024.

H K CHEMITEI

JUDGE

