



**Kogi v Kogi alias Mwaura Wambui & 2 others (Civil Suit  
61 of 2018) [2024] KEHC 8000 (KLR) (Civ) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8000 (KLR)

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

**CIVIL**

**CIVIL SUIT 61 OF 2018**

**HK CHEMITEI, J**

**JULY 4, 2024**

**BETWEEN**

**JOSEPH WANYIRI KOGI ..... APPLICANT**

**AND**

**MWAURA KOGI ALIAS MWAURA WAMBUI ..... 1<sup>ST</sup> RESPONDENT**

**KARANJA KOGI ALIAS KARANJA WAMBUI ..... 2<sup>ND</sup> RESPONDENT**

**MWANGI KOGI ALIAS MWANGI WAMBUI ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. In his application dated 3<sup>rd</sup> June 2022 the Applicant prays for the following orders:
  - (a) That the court do issue restraining orders against the Respondents, their families and any other party from visiting the grave of the deceased Kogi Mwaura situate at land parcel number Gatamaiyu/Kamuhege/415 or in any other manner dealing with the said land pending the determination of DNA compliance testing as per the courts judgement dated 2<sup>nd</sup> December 2021.
2. The Applicant prayed for costs of the suit.
3. The application is premised on the sworn affidavit of the Applicant Joseph Wanyiri Kogi who is the legal representative of the estate of the late Kogi Mwaura Wallace dated the same date.
4. The Applicant essentially is praying that the orders of this court dated 2<sup>nd</sup> December 2021 directing that DNA analysis be carried out on the Respondents be executed.



5. The Applicant is further praying that there be no action over land parcel number Gatamaiyu/Kamuchege/415 where the deceased was buried and that the Respondents be restrained from dealing with the said parcel of land pending the above DNA exercise.
6. The Respondents on the other hand have opposed the said application vide the preliminary objection dated 28<sup>th</sup> June 2022. The said objection is premised on the grounds that the Applicant's application ought to be dismissed for the reason that land parcel number Gatamaiyu/Kamuchege/415 was dealt with under Succession Cause No. 3002 A of 2003 and this court was therefore functus officio.
7. The Applicant responded through the preliminary objection and argued that the issues raised therein were dealt with by Justice Ongeri on 1<sup>st</sup> November 2019 as well as Justice Musyoka. That this court if allowed to deal with the said objection will therefore be dealing with the matters already disposed and essentially sitting as an appellate court.
8. I have carefully read the application the responses and further affidavits and the preliminary objection on board. I have also read the submissions by the parties.
9. I think the issue before this court is clear and straight forward and should not be clouded by various pleadings including the preliminary objection. It is simply the orders of 2<sup>nd</sup> December 2021 which states;
  - “(a) That the plaintiff and the Defendants submit themselves for DNA test.
  - (b) That the cost of DNA test be met by the plaintiff.
  - (c) That the question of whether or not the Defendants should be ordered to stop using the name “Kogi” and or the question of whether the Registrar General should be directed to rectify his records is one that will have to abide the results of the DNA tests....”.
10. It is clear that the plaintiff therein the late Wallace Kogi passed on 28<sup>th</sup> December 2021. Samples were collected by Dr. Nyanyal Oduol Johansen and the same is safely kept.
11. If that is the case the Defendants ought therefore to comply with the above orders of the court. The other issues in my view touching on land parcel number Gatamaiyu /Kamuchege/415 ought to be dealt with elsewhere and preferably in the succession file or ELC court or an appropriate forum.
12. For now, this court shall concern itself with the DNA issues. In any event the issue of the land was not, it appears, addressed by the court when it dealt with the DNA issue. I have perused the Originating summons dated 5<sup>th</sup> October 2018 and I do not find any issue touching on land except the DNA.
13. In the premises I direct that:-
  - (a) The Defendants/Respondents within 30 days from the date herein comply with the court orders dated 2<sup>nd</sup> December 2021.
  - (b) The application is otherwise disallowed.
  - (c) Costs in the cause.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 4<sup>TH</sup> DAY OF JULY 2024.**

**H K CHEMITEI**

**JUDGE**

