



REPUBLIC OF KENYA



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**In re Estate of Mukhwabi Ragama and Kironde Mukhwabi (Deceased) (Succession Cause 110 of 1997) [2024] KEHC 10556 (KLR) (5 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10556 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION CAUSE 110 OF 1997  
WM MUSYOKA, J  
SEPTEMBER 5, 2024**

**IN THE MATTER OF THE ESTATE OF MUKHWABI  
RAGAMA AND KIRONDE MUKHWABI (DECEASED)**

**RULING**

1. The application, for determination, is a chamber summons, dated 16<sup>th</sup> April 2024. It is at the instance of Everline Natocho Juma, and it seeks that she and Peter Juma be subjected to a deoxyribonucleic acid (DNA) test, with the Government Chemist, to clear all doubts as whether Peter Juma was her biological father.
2. The said application was provoked by the outcome in Busia HC Misc. Application No. E052 of 2023, where the administrator herein had obtained an order against the National Registration Bureau, to release documents relating to her national identity card registration, to confirm who was reflected, in those documents, as her parents. The administrator alleged that her parents are Peter Juma and Leonida Mugeni, something which she asserts not to be true. She asserts that her parents are Kironde Mukhwabi and Leonida Mugeni. She avers that both Kironde Mukhwabi and Leonida Mugeni are dead, but Peter Juma is alive, hence a DNA test could be conducted using samples from him. She avers that, should the order not be granted, she would suffer prejudice.
3. There is a reply to the application, by Morris Oduor Were, the administrator. He avers that the said application is frivolous and an afterthought, prompted by confirmation from the State that the registration details in its possession confirm who the parents of the applicant are. He avers that the applicant has not denied that she was the author of the information in the possession of the office of the registrar of persons. He further avers that the applicant had alleged that Peter Juma was her uncle, and not her biological father. He asserts that conduct of the DNA test would be a wild goose chase, as it would not produce proof beyond doubt who her father is. He argues that if the court were to be persuaded that Peter Juma was not her biological father, then the court should cite her for perjury. He argues that 1 can only have 1 father for succession purposes, and that once she renounced the deceased as her father, in those registration documents, then she can only inherit from her officially recognised father, Peter Juma. He further argues that the application by the applicant, for revocation of grant,



- which is still pending, dated 28<sup>th</sup> September 2023, revolves around the paternity of the applicant, and the applicant was bound to prove that Kironde Mukhwabi was her father.
4. I have perused the summons for revocation of grant, dated 28<sup>th</sup> September 2023, and noted that paternity of the applicant is at the heart of it. I have also perused the file in Busia HC. Misc. Application No. E052 of 2023, which subpoenaed the records from the registrar of persons, with respect to the details the applicant used to obtain her national identification card, and noted that the same was prompted by the filing of the application, dated 28<sup>th</sup> September 2023, and was intended to obtain information for use at the hearing of the said summons.
  5. I am persuaded that the application herein, dated 16<sup>th</sup> April 2024, is premature. It should become necessary after hearing and disposal of the application, dated 28<sup>th</sup> September 2023. A DNA test is intrusive (see *In re Estate of SMM'I (Deceased)* [2019] eKLR (Mabeya, J)), particularly where the consent of a person who is not party to the cause is not obtained (see *RNC & 2 others v. SMG* [2017] eKLR (Ougo, J)), *In re Estate of MAP (Deceased)* [2019] eKLR (Ougo, J) and *In re Estate of ZWN (Deceased)* [2022] eKLR (J. Ngugi, J), and it should be adverted to as a last resort. See *SWW v. GMK* (2012) eKLR (Majanja, J), *RNC & 2 others v. SMG* [2017] eKLR (Ougo, J) and *In re Estate of Peter Muraya Chege alias Muraya Chege (Deceased)* [2019] eKLR (Ndung'u, J). It should be considered only after the application, dated 28<sup>th</sup> September 2023, is resolved in a manner which establishes that the applicant herein was not a child of Kironde Mukhwabi. A trial, on the correctness or genuineness of the information from the registrar of persons, should be conducted at the hearing of the revocation application. It should be in that hearing that the applicant has to establish the manner in which she is a child of Kironde Mukhwabi, and only upon strong evidence pointing to a close relationship between the mother of the claimant and the deceased, pointing a possibility that it could have led to a conception of the applicant. See *In re Estate of JSM (Deceased)* [2019] eKLR (Achode, J) and *In re Estate of JMK (Deceased)* [2021] eKLR (Achode, J). The best way forward, with respect to the application, dated 16<sup>th</sup> April 2024, is to have it canvassed within the hearing of the revocation application, dated 28<sup>th</sup> September 2023, where, depending on the evidence adduced, the court will assess whether or not to order a paternity test through DNA samples.
  6. There is one matter that I have noted, which is not raised in any of the applications, but which is of critical importance, and, I believe, it should be addressed at the hearing of the summons for revocation of the grant. The cause herein relates to an estate of 2 individuals, Mukhwabi Ragama and Kironde Mukhwabi. There cannot be a joint estate of 2 individuals, for succession purposes. There can only be 1 estate for each individual. There must be 1 for Mukhwabi Ragama, and another for Kironde Mukhwabi. It could be that the 2 owned the property jointly, or 1 was the father of the other, and upon the death of the father, it was presumed that the estate automatically devolved upon the son, hence the need to initiate 1 succession cause in respect thereof.
  7. Whatever the case, there can only be 1 succession cause in respect of the estate of 1 individual, and a single succession cause should not combine administration of estates of two or more individuals. There can only be 1 administration for each estate. See *In Re Estate of James Kiarie Muiruri (Deceased)* [2004] eKLR (Koome, J), *In re Estate of Samuel Ngugi Mbugua (Deceased)* [2017] eKLR (Musyoka, J) and *In re Estate of Josphat Gatia Muchiri (Deceased)* [2018] (Musyoka, J). In this case, therefore, 2 causes ought to have been initiated, 1 in the estate of Mukhwabi Ragama, and the other in the estate of Kironde Mukhwabi. If Kironde Mukhwabi was a son of Mukhwabi Ragama, then succession to the estate of Mukhwabi Ragama should be handled first, so that what is due to the estate of Kironde Mukhwabi, from the estate of Mukhwabi Ragama, is determined and devolved to that estate, to enable the descendants of Kironde Mukhwabi have access to that assets.



8. I have seen a copy of the search certificate, in respect of the estate asset, Samia/Bujwanga/959, and I have noted that the property was registered in the names of 3 individuals, including Mukhwabi Ragama and Kironde Mukhwabi, with each holding a 1/3 share. That meant that the 3 held the property in tenancy in common, with each of the co-owners having a distinct 1/3 share. See [\*In re Estate of John Ngumba Njoroge \(Deceased\)\*](#) [2018] eKLR (J. Ngugi, J) and [\*In re Estate of Philip Nguli Kivulu \(Deceased\)\*](#) [2021] eKLR (Odunga, J). Upon demise of Mukhwabi Ragama and Kironde Mukhwabi, their estates were entitled to a 1/3 share each. Succession ought to have been sought separately for each 1/3 share. The parties will have to resolve the issue, by deciding on the way forward, for as it is, the cause herein is not tenable. Succession to 2 separate estates cannot be litigated in 1 succession cause. See [\*In re Estate of Godfrey Kituku \(Deceased\) & Regina Mukui Ndaka \(Deceased\)\*](#) [2017] eKLR (Chitembwe, J) and [\*In re Estate of Rolf Rainer Schmid \(Deceased\)\*](#) [2017] eKLR (Musyoka, J). The parties will have to decide on whether this cause should relate to the estate of Mukhwabi Ragama, or that of Kironde Mukhwabi, but not both.
9. The final order shall be that the application dated 16<sup>th</sup> April 2024, shall not be determined in this ruling, instead it shall be canvassed simultaneously with the summons for revocation of grant, dated 28<sup>th</sup> September 2023. The said revocation application shall be canvassed by way of *viva voce* evidence, based on the affidavits sworn by the parties and filed herein. In case the parties intend to call witnesses, who have not filed affidavits, they shall cause witness statements to be filed by those witnesses. There is a window, of 30 days, for the parties to file and exchange those witnesses' statements, together with lists of witnesses, and lists and copies of the documents to be relied upon. The matter shall be mentioned on 14<sup>th</sup> October 2024, for compliance, and for allocation of a date for hearing.
10. Orders accordingly

**RULING DATED AND SIGNED AT BUSIA, AND DELIVERED VIA EMAIL, ON THIS 5<sup>TH</sup> DAY OF SEPTEMBER 2024**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Bwire, instructed by KOMM Advocates, Advocates for the administrator.

Ms. Nabulindo, instructed DK Nabulindo & Company, Advocates for the applicant.

