



REPUBLIC OF KENYA



**In re Estate of Joseph Gichanga Kimani (Deceased) (Succession Cause  
1088 of 2005) [2024] KEHC 12585 (KLR) (Family) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12585 (KLR)

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

**FAMILY**

**SUCCESSION CAUSE 1088 OF 2005**

**HK CHEMITEI, J**

**OCTOBER 17, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE  
JOSEPH GICHANGA KIMANI (DECEASED)**

**BETWEEN**

**LAWRENCE KIMANI GICHANGA ..... 1<sup>ST</sup> APPLICANT  
ELIZABETH WANJIRU GICHANGA ..... 2<sup>ND</sup> APPLICANT  
KEZIAH GATHONI GICHANGA ..... 3<sup>RD</sup> APPLICANT  
FELIX KARIUKI GICHANGA ..... 4<sup>TH</sup> APPLICANT**

**AND**

**ALEXANDER KIMANI GICHANGA ..... 1<sup>ST</sup> RESPONDENT  
RISPER WAMAITHA GICHANGA ..... 2<sup>ND</sup> RESPONDENT  
YVONNE ASABE ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. In their summons for revocation of grant dated 20<sup>th</sup> December 2023 the Applicants are asking for the following orders:-
  - (a) That the court be pleased to revoke/nullify confirmed grant issued on 15<sup>th</sup> June 2020.
  - (b) That upon the Applicants presenting their case the honorable court be pleased to reissue another confirmed grant.
2. The application is based on the grounds thereof and the sworn affidavit of Keziah Gathoni Gichanga dated even date.



3. The application is opposed by the 1<sup>st</sup> Respondent vide the preliminary objection dated 20<sup>th</sup> February 2024 in which he states that the application fails the test under Order 9 rule 9 (a) and (b) of the Civil procedure Rules. In other words, the firm of Nyangito & Co Advocates are improperly on record.
4. On this ground alone the application ought to be struck out.
5. The 1<sup>st</sup> Respondent has also filed a replying affidavit sworn on 20<sup>th</sup> February 2024 opposing vehemently the application.
6. The parties were directed to file written submissions which they complied and the court has had a look at them.
7. The first issue to determine is the issue raised in the preliminary objection. It appears to me that the firm of Nyangito Advocates filed their Notice of Appointment dated 26<sup>th</sup> July 2023 which I suppose was in place of Waweru Munyi & Co Advocates.
8. There was no evidence at all that the said firm sought leave of the court or consent of the previous firm before filing the application herein.
9. The provisions of Order 9 rule 9(a) and (b) of the Civil procedure rules are clear and coached in mandatory terms. The same states as follows;
10. When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be affected without an order of the court—
  - “(a) upon an application with notice to all the parties; or
  - (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be”
11. In view of the above provisions of the law and the fact that there was no rebuttal from the said firm I find the preliminary objection merited. It must be noted that the mischief the law seeks to cure is where litigant’s forum shop for legal representation like the case at hand and extend litigation unnecessarily.
12. Ordinarily the said firm ought to have sought the leave of the court or seek a consent from the previous law firm. They cannot therefore circumvent the fact that judgement of this court had been delivered and they have even filed an appeal to the Court of Appeal.
13. This court on this score cannot exercise its inherent jurisdiction for the simple reason that there is no room for such maneuver.
14. In the premises the preliminary objection is hereby upheld, the application dated 20<sup>th</sup> December 2023 and any other pleadings emanating therefrom from the firm of Nyangito & Co Advocates dealing with matters herein are hereby expunged from the records.
15. Costs to the Respondents.

**DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 17<sup>TH</sup> DAY OF OCTOBER 2024.**

**H K CHEMITEI**

**JUDGE**

