



REPUBLIC OF KENYA



**Nganga v Karanja & another (Succession Cause 182 of 2011)  
[2023] KEHC 2161 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2161 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 182 OF 2011  
HK CHEMITEI, J  
MARCH 23, 2023**

**BETWEEN**

**ROSE WANJIKU NGANGA ..... APPLICANT**

**AND**

**DORINE WANGARI KARANJA ..... 1<sup>ST</sup> RESPONDENT**

**BONIFACE KARIUKI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant filed summons for revocation of grant dated June 16, 2022. The respondents on their part have filed a preliminary objection dated July 8, 2022 asking the court to dismiss the said application for being res judicata. That the judgement of this court dated May 26, 2022 dealt comprehensively with the issue being raised by the applicant.
2. The parties were directed to file written submissions so as to dispose the said objection. Both parties have complied.
3. The respondents in citing *Mukisa Biscuits Manufacturing Ltd v West End Distributors (1969) EA 696* held that this was a proper matter in which the preliminary objection was relevant.
4. They went ahead to cite the portion of the judgement of this court which made reference to the applicant, namely that since the objector's mother was not married to the deceased it followed that she was not a dependant of the deceased.
5. The applicant on her part submitted that the issue relating to her being a child and therefore a beneficiary to the estate has never been litigated and therefore a distinction has to be made between her and her mother. That the issues already determined by the court were to do with her mother and not herself.



6. The applicant cited the case of *Uburu Highway Development Limited v Central Bank of Kenya & 2 others [1996] eKLR* where the court expounded the issue of what res judicata is.
7. The court has perused the application by the applicant and the preliminary objection herein. The issue of res judicata as explained under Section 7 of the *Civil Procedure Act* means that the previous suit has to have been between the same parties, litigating under same title, a competent court heard the issue and the same issue has been raised again.
8. I respectfully do not agree with the respondent. The parties who were litigating were the respondents and the applicant's mother Alice Wambui Kinuthia. The judgement of the court found that the applicant's mother was not a wife to the deceased. The court went further to accuse the applicant's mother of not proving that the child was sired by the deceased.
9. This position taken by the court was appropriate in my view as the issues were not relating to the applicant. There is no law barring the party who claims to be a dependant under the provisions of Section 29 of the Succession Act to claim interest in the estate. My understanding is that the applicant now of age is claiming her right in the estate as a child to the deceased.
10. Granted, her mother was unable to establish hers, but nothing stops her from asserting her interest which will be subjected to the usual prove on a balance of probabilities.
11. The issue therefore of whether the application is res judicata in my view cannot stand. In any case looking at the pleadings and the annexures to the supporting affidavit it is evident that they raise factual issues and this court would not in any case have allowed the preliminary objection to stand as the issues raised runs contrary to the findings of the court in the Mukisa Biscuits case(supra)
12. In the premises, the preliminary objection is not merited.
13. Having extensively perused the summons, it is my considered view that the best way to dispose the same is by way of viva voce evidence. The issues raised are weighty and will need the makers of some of the documents to be called in.
14. Consequently, and in disallowing the preliminary objection, the court directs that;
  - a. The parties are granted 30 days to file and exchange statements and any other exhibits they intend to rely on.
  - b. An appropriate mention date be taken at the registry to confirm compliance
  - (c) costs shall be in the cause.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 23RD DAY OF MARCH 2023.**

**H. K. CHEMITEI.**  
**JUDGE**

