



In re Estate of Alfred Limali Karisa (Deceased) (Succession Cause E089 of 2021) [2023] KEHC 17347 (KLR) (12 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17347 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE E089 OF 2021**

G MUTAI, J

MAY 12, 2023

BETWEEN

STEPHANO FURAHA KARISA OBJECTOR

AND

CHICHI WAKATHY KIMANI PETITIONER

RULING

1. Alfred Liwari Karisa (hereafter “the deceased”) died on November 22, 2020 at the Coast General Hospital Mombasa. There has been contestation regarding his estate between the petitioner/respondent in this cause (hereafter “Chichi” or “the petitioner/respondent”) and the objector/applicant (hereafter “the objector”). Each filed a succession cause in regard to the estate of the deceased with Chichi filing the instant matter on August 9, 2021 while Stephano filed Mombasa Chief Magistrate’s Court Succession Cause No. 154 of 2021; In the Matter of the Estate of Alfred Liwali Karisa Njole (Deceased) on May 3, 2021. Both the Objector and the petitioner have Grant of Letter or Letters of Administration Intestate.
2. Vide Summons for Revocation of Grant dated March 17, 2022 brought under Rules 44, 49 and 59 of the *Probate and Administration Rules* and section 76 of the *Law of Succession Act* the Objector sought, in the main, to have the grant herein issued to Chichi Wakathy Kimani revoked or annulled on the basis that the same was obtained fraudulently and by concealment from court of material facts relating to the estate.
3. The contention made by the objector is that the petitioner/respondent is not the daughter of the deceased, is not known by the members of the deceased’s family and that the deceased had five dependants that the petitioner/respondent failed to disclose in her application. The objector averred that the petitioner/respondent had used a fraudulent or forged death certificate to obtain the Grant. It was also urged that there was another grant issued by the Subordinate Court in respect of the same estate.



4. The petitioner/respondent opposed the summons for Revocation of Grant. Vide a replying affidavit filed on April 20, 2022 she averred that although the deceased died without a wife. She was his only biological child being an issue of a relationship between a Ms. Rahab Muthoni and the deceased. She stated that she had been introduced to members of his family. The petitioner/respondent gave a detailed account of the relationship between the deceased, the Objector, his family, and herself which I need not rehash at this point. In support of her averments the petitioner/respondent annexed to her replying affidavit an immunization card which gives the name of her father as being Alfred Liwali Karisa.
5. In a supplementary affidavit filed on April 22, 2022 the Objector reiterated what he had previously deponed. He also admitted that the Petitioner paid the mortuary fees that had accrued in respect of the deceased. It was his contention that she did so, not as a family member, but as a friend, and that she had subsequently asked for a refund of the money she paid. He argued that the petitioner had not availed a copy of her birth certificate to prove that indeed the deceased was her father.
6. When the matter came up for hearing on September 20, 2022 the court ordered that the petitioner/respondent and 2 siblings of the deceased be subjected to DNA test so that it could be established if the deceased was the father of the petitioner/respondent.
7. The results of the DNA test were filed in court on January 19, 2023. The results show that samples were extracted from Mr. Stephano Furaha Karisa and Ms. E K Njole, the siblings of the deceased, and the petitioner/respondent. The purpose of the test was to determine if Mr. Stephano Furaha Karisa and Ms. E K Njole are the paternal uncle and aunt respectively of the petitioner/respondent, and by that fact the daughter of the deceased (see paragraph 2 of the DNA results). The results obtained were inconclusive, with the data not supporting either inclusion or exclusion of paternity.
8. The specific finding of the test was that the chance of Mr. Stephano Furaha Karisa and Ms. E K Njole being the paternal uncle and aunt, respectively, of Chichi Wakathy Kimani is 32.7155% while the chance they were not is 2 times greater.
9. The matter came before me on March 13, 2023. On the said date copies of the DNA results were availed to the parties. I directed the parties to file Written Submissions. On March 29, 2023 upon confirming that the parties had complied with the directions of the Court. I set down the matter for ruling on May 5, 2023.
10. The objector/applicant invites the Court to find that the DNA results, such as they are, show that the petitioner/respondent is not the biological daughter of the deceased and that the Grant issued to her should be revoked. Reliance is placed on the case of *In re Estate of Julius Ndubi Javan (deceased)* [2018] eKLR.
11. The petitioner/respondent on the other hand submits that the DNA report was inconclusive as it did not say that Chichi is not the daughter of the deceased. It was therefore urged that further evidence filed herein would eliminate any doubt as to her paternity. Reliance was placed on the case of *In re Estate of the late Koima Cheruiyot (deceased)* [2021] eKLR.
12. Section 29 of the *Law of Succession Act* defines a dependant as: -
 - (a) the wife of wives or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
 - (b) such of the deceased's parents step-parents, grandparents, grandchildren, stepchildren, children whom the deceased had taken into his family as his own, brothers and sisters, and



half-brothers and half-sisters as were being maintained by the deceased immediately prior to his death; and

- (c) where the deceased was a woman her husband if he was being maintained by her immediately prior to the date of her death”.
13. The Law gives priority to the wife/wives and children of a deceased person. Unlike any other persons mentioned in section 29 of the Act, they need not prove maintenance by the deceased. The class of people mentioned in section 29(b) of the said Act on the other hand must show that the deceased maintained them prior to his death.
14. *In re Estate of Joshua Orwa Ojodeh (deceased)* [2014] eKLR. Musyoka J held that “Going by the above provision, where a deceased person is survived by a spouse of child or children, the other relatives are not entitled to share in the intestate estate of such person. The spouse and child are entitled to the estate to the exclusion of all other relatives. The excluded relatives include the parents of the deceased. Parents are only entitled where there is no surviving spouse or child. This is clear from the language of section 39(1) of the Act, which state as follows: -
- “39(1) where an intestate has left no surviving spouse or children the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority
- a. Father, or if dead
- b. Mother...”
15. From the foregoing it is clear that the results of the DNA test, had they been conclusive, would have been definitive. If it is proved that the petitioner/respondent is the daughter of the deceased, the objector/applicant and siblings would have no claim to his brother’s estate. Consequently, this court would revoke the Grant he obtained in the court below. If, on the other hand, it was shown that she isn’t a daughter of the deceased then, in that event, she would have no claim to the estate of the deceased unless she could show with cogent evidence that the deceased had adopted her as his child.
16. I have perused the DNA report prepared by Unistel Medical Laboratories and filed in court on January 19, 2023. Paragraph 3 of the said report states that
- “the result is Inconclusive. The data does not support either inclusive or exclusion. Including more close family members (parents, children, sibs) of the deceased may obtain a more conclusive result”.
17. The objector/applicant invites the court totake into account the statistics given in paragraph 3.1.1 of the DNA Report that indicate that the probability of the petitioner/respondent being a niece of the objector/applicant as being 32.7155% and to find it more likely that not that she is not the daughter of the deceased. I am afraid I am unable to do so. The Report is clear that its findings are inconclusive. In any case, where an outcome of my determination is so glaringly binary, the court must be exceedingly cautious. There is a clear and present risk that a rightful beneficiary may be denied her rightful inheritance, or, on the other hand that an impostor may benefit.
18. The report proposes that a DNA test that includes more family members may “obtain a more conclusive result” (emphasis mine). I am in agreement with the said proposal.
19. I therefore find and hold that the DNA result was inconclusive.



20. Consequently, I order that the petitioner/respondent and the objector/applicant and 3 other known siblings of the Alfred Liwali Karisa Njole (deceased) undergo DNA tests at Kemri Laboratories, Nairobi to determine if the petitioner/respondent was the daughter of the deceased.
21. This matter shall be mentioned on June 6, 2023 to confirm compliance and for further directions.

Orders accordingly.

DELIVERED, DATED, AND SIGNED THIS 12TH DAY OF MAY, 2023 AT MOMBASA VIA MICROSOFT TEAMS

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GREGORY MUTAI

JUDGE

In the presence: -

Ms. Khavuchi holding brief for Mr. Obonyo for the Objector/Applicant

No appearance for the Petitioner/Respondent

Winnie Migot – Court Assistant

