



REPUBLIC OF KENYA



**In re Estate of the Late Samuel Mwangi Munene (Deceased) (Succession Cause 54 of 2022) [2023] KEHC 20117 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20117 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 54 OF 2022  
HK CHEMITEI, J  
JULY 13, 2023**

**BETWEEN**

**MARGARET OTENGO MWANGI ..... 1<sup>ST</sup> APPLICANT  
LUCY RUTH WAIRIMU MWANGI ..... 2<sup>ND</sup> APPLICANT  
RISPAH MUTHONI MWANGI ..... 3<sup>RD</sup> APPLICANT  
JONATHAN MUNENE MWANGI ..... 4<sup>TH</sup> APPLICANT**

**AND**

**JOHN PAUL MUNENE MWANGI ..... 1<sup>ST</sup> PETITIONER  
TERESA WANJIRU MWANGI ..... 2<sup>ND</sup> PETITIONER**

**RULING**

1. There are two sets of applications by the applicants herein. The first application dated June 3, 2022 prays for orders of injunction against the respondent from dealing adversely with the deceased estate and denying the applicants its usage thereof pending the determination of the application.
2. The applicants as well pray that the grant of letters of administration issued to the respondents on December 10, 2021 be revoked and or annulled and the applicants be enjoined as beneficiaries to the estate. They also prayed to be included as administrators to the estate.
3. The application is based on the grounds thereof and the sworn affidavit of the 2<sup>nd</sup> applicant of even date.
4. The second application by the applicants is dated July 12, 2022 seeking contempt orders against the respondents for violating the orders of the court issued on June 23, 2022. The same is premised on the affidavit of the 2<sup>nd</sup> applicant sworn on the same date.



5. When the matter came up for direction the court was of the considered opinion that the two applications could be dealt with jointly. The parties have as well filed the necessary responses and the submissions.
6. The court proposes to deal with the first application which is substantive and later consider whether it shall still be necessary to issue any directives as regards the second application.
7. Turning now to the first application it is not in dispute that the respondents filed a suit at the lower court namely Succession Cause no E820 of 2021 and obtained letters of administration. The said file was later transferred to this court for want of jurisdiction.
8. The second applicant has given a chronology on her behalf and that of the rest of the applicants regarding their relationship with the deceased. She deponed that the 1<sup>st</sup> applicant was their mother and the deceased was their father. That the respondents and their house were step brothers. She went on to state that the respondent clandestinely filed the succession proceedings at the lower court without their knowledge despite the letter from the area chief indicating that they were indeed the deceased children.
9. The first applicant swore a supplementary lengthy affidavit deposing among others a long history between her and the deceased. She said that she was married to the deceased in January 1976 and they stayed together till his demise on November 18<sup>th</sup> November 2020.
10. She further said that the respondents were from the deceased first wife and the respondents were therefore her step children. She denied that she did not know the deceased issues as claimed by the respondents noting that she was with him all his active lifetime.
11. She said that she was a civil servant and contributed in the purchase of some of the estates properties and assets contrary to the respondent's assertion.
12. She said that she was sickly and diabetic and she therefore needed to be taken care of by the estate just like when her late husband was alive. She denied that she was notified of the succession proceedings.
13. The respondent's filed two jointly sworn affidavits. The first affidavit dated July 22, 2022 admitted that there was a marriage between the 1<sup>st</sup> applicant and the deceased but the same was only up to 1985. They claimed that they did not exclude her or concealed any facts herein since the properties were acquired between the deceased and their mother to the exclusion of the 1<sup>st</sup> applicant.
14. They went on to deponed that some of the properties have been transferred to other people and were not therefore available for distribution although they could still be in the name of the deceased.
15. They therefore claimed that the applicants have no part in the estate as they only emerge after the deceased had died.
16. The second affidavit dated July 22, 2022 as well was responding to the second application for contempt.
17. I have perused the application, the supporting affidavits especially the 1<sup>st</sup> applicant's supplementary affidavit dated September 6, 2022 which has not been controverted by the respondents. They have as a matter of fact admitted that the 1<sup>st</sup> respondent was married to their father and have not denied that the applicants are therefore from the second house and they are from the first house.
18. The letter from the chief Kiriri Location mentions them as the deceased children as well as the respondents. It is this letter date December 15, 2020 that they used in filing succession proceedings at the Lower Court. I have perused the probate form P&A 5 and strangely the names of the applicants are missing.



19. This smug bad faith on the part of the respondent to a probate and reprobate. If they have a problem with the 1<sup>st</sup> applicant, then they should have at least indicated in the said form her children whom the chief clearly indicated. In any case I doubt whether the chief simply plugged the names elsewhere apart from getting information from the respondents.
20. Needless to say I find that the issues raised by the 1<sup>st</sup> applicant may not be litigated based on the affidavit evidence for now. The court probably before distribution of the estate may consider, assuming it is still contentious, whether to consider viva voce evidence.
21. For now, this court finds merit in the application. The application for contempt may not be efficacious at the moment taking into consideration the fact that the court has concluded that the applicants ought to be part of the estate. The same shall be held in abeyance.
22. As regards the health and wellbeing of the 1<sup>st</sup> respondent, it is not contested that she is undergoing treatment because of her diabetic conditions. She must not be hindered from enjoying the use of her husband's estate to that extent.
23. Consequently, this court orders as hereunder;
  - a The grant of letters of administration issued by Hon D Mosse on December 10, 2021 hereby set aside with all the attendant consequences.
  - b The new joint grant of letters of administration to the estate of the deceased herein is hereby issued to Margaret Otiengo Mwangi, Lucy Ruth Wairimu Mwangi, John Paul munene Mwangi and Teresa Wanjiru Mwangi.
  - c The applicants are hereby made beneficiaries to the estate herein and their names be included in P& A 5 form accordingly.
  - d The status quo of the estate as at the time of the deceased death be and is hereby maintained and there shall not be any sale or parting with any of the estates properties or assets in any way whatsoever pending the final distribution by the court.
  - e The application for contempt proceedings dated July 12, 2022 is hereby held in abeyance.
  - f Costs shall be in the cause.

**DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 13<sup>TH</sup> DAY OF JULY 2023.**

**H. K. CHEMITEI**

**JUDGE**

