



REPUBLIC OF KENYA



**In re Estate of Isaac Kimani Mungai (Deceased) (Succession Cause E898 of 2020) [2023] KEHC 20335 (KLR) (Family) (3 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20335 (KLR)

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

**SUCCESSION CAUSE E898 OF 2020**

**MA ODERO, J**

**JULY 3, 2023**

**BETWEEN**

**WILLIAM MWIKYA MUTUKU ..... 1<sup>ST</sup> APPLICANT**

**REGINA NDUNGE MUTUKU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**EUNICE WAMBUI MUNGAI ..... 1<sup>ST</sup> RESPONDENT**

**GLADYS WANJIRU KIMANI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before this court is the summons dated July 14, 2022 by which the applicant William Mwikya Mutuku and Regina Ndunge Mutuku seek the following orders:-

- “ 1. Spent.
2. That pending the hearing of the objector’s affidavit of protest, this honourable court be pleased to direct the will of Isaac Kimani Mungai(deceased) dated April 23, 2018 be produced together with a sample of the deceased’s known signatures to the Directorate of Criminal Investigations for verification and investigation.
3. That the Directorate of Criminal Investigations do issue a report on the authenticity of the signatures in the will allegedly belong to Isaac Kimani Mungai (deceased) dated April 23, 2010.
4. That the witnesses in the will of Isaac Kimani Mungai (deceased) dated April 23, 2018 be hereby summoned to give an account of the execution of the will.



5. That the costs of this application be in the cause.
  6. That the court do make such order or further orders as it may deem fit and just in the interest of justice.
2. The summons was premised upon section 11 of the Succession Act, rules 49 and 54 of the Probate and Administration Rules, sections 1A and 3 A of the Civil Procedure Act, order 16 rule, order 16 rule 14 and order 19 rule 1 of the Civil Procedure Rules and all enabling provisions and was supported by the affidavit of even date sworn by the 1<sup>st</sup> applicant.
  3. The respondents Eunice Wambui Mungai and Gladys Wanjiru Kimani opposed the application through the replying affidavit dated December 13, 2022 sworn by the 1<sup>st</sup> respondent.
  4. The summons was canvassed by way of written submissions. The applicants filed the written submissions dated January 31, 2023 whilst the respondents relied upon their written submissions dated February 15, 2023.

### **Background**

5. This succession cause relates to the estate of the late Issac Kimani Mungai who died at Kenyatta National Hospital on December 1, 2019. A copy of the death certificate serial number 0xxxx2 is annexed to the petition for grant of probate.
6. The deceased died testate having left behind a written will dated April 23, 2018.
7. The deceased was survived by the following persons:-
  - (a) Eunice Wambui Mungai - widow
  - (b) Gladys Wanjiru Kimani - widow
  - (c) Moses Fredrick Mungai - son
  - (d) Victoria Monica Wanjiru - daughter
  - (e) Ann Elizabeth Wairimu Kimani - daughter
  - (f) Joshua Mucheni Kimani - son
  - (g) Gladys Mutili Kimani - step daughter
8. The assets which were left by the deceased were listed as follows:-
  - i) Kajiado/Kitengela/30258.
  - ii) Two plots at Githurai known as Family Finance Dayko- LR 13673/128 and LR 13673/129.
  - iii) Toyota Cressida registration No Kxx 8xxD
  - iv) KTDA shares
  - v) BAT shares
  - vi) Pension from Treasury
9. Following the demise of the deceased a grant of probate with written will was on June 22, 2021 issued to Eunice Wambui Mungai and Gladys Wanjiru Kimani (the respondents herein). The grant is yet to be confirmed.



10. The applicants in this matter filed a protest to the confirmation of grant dated April 1, 2022. The applicants claim that they are the son and wife of the deceased. They allege that the grant was obtained by the respondents fraudulently and by concealment of material facts. That they were not involved in the succession proceedings.
11. The applicants further contest the validity of the written will purportedly left behind by the deceased and argue that the same is forgery. They are aggrieved that no provisions were made for them in the said written will and claim that they are entitled to an equal share of the estate of the deceased.
12. The protest was scheduled to be heard by way of *vive voce* evidence on July 18, 2022. However before the protest filed by the applicants could be heard the applicant filed this present application.
13. The applicants pray that a copy of the original will together known samples of the handwriting and signatures of the deceased be supplied to the Directorate of Criminal Investigations for investigations.
14. It is not the duty of the court to involve itself in the investigations being conducted by the Directorate of Criminal Investigations (DCI). If the applicants believe that the written will produced in court is a forgery then the proper procedure is that they make a report to the DCI for investigations. The DCI will then take up investigation of the complaint and in doing so will call for all documents and/or records it requires to assist in its investigations. If the DCI requires any assistance from this court in securing any documentation, then they are at liberty to themselves approach the court for such assistance.
15. The DCI is an independent body and cannot be directed by this court to carry out investigations into any matter. Once a report is made it is up to the DCI to decide whether or not to investigate that report. I therefore decline to direct the DCI to investigate any matter.
16. The applicants are equally at liberty to commission their own forensic examination of the written will by hiring a private document/examiner who may then prepare an independent report of his/her findings.
17. Suffice to say it is the duty of this probate court to ensure that the estate of the deceased is distributed to the genuine beneficiaries. In pursuance of this mandate and in view of a challenge having been made to the validity of the written will I do direct that the respondents provide samples of deceased handwriting and signature for comparison either by DCI or by an independent document/examiner.
18. On the prayer to call the witnesses to the will this prayer is in my view premature as the hearing has not commenced. The applicants may revisit this prayer when the hearing commences.
19. Finally, this application partially succeeds the court makes the following orders:-
  - (i) The respondent to avail sample handwriting/signatures of the deceased to the DCI or to an independent document examiner for purposes of comparison.
  - (ii) Each party to meet its own costs.

**DATED IN NAIROBI THIS 3RD DAY OF JULY, 2023.**

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**MAUREEN A. ODERO**

**JUDGE**

