



**MKK & Others v CWK & 7 others (Miscellaneous Civil Application E035 of 2022) [2023] KEHC 20545 (KLR) (20 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20545 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS CIVIL APPLICATION E035 OF 2022  
HK CHEMITEI, J  
JULY 20, 2023**

**BETWEEN**

**MKK & OTHERS ..... APPLICANT**

**AND**

**CWK ..... 1<sup>ST</sup> RESPONDENT**

**BKK ..... 2<sup>ND</sup> RESPONDENT**

**TN ..... 3<sup>RD</sup> RESPONDENT**

**THE REGISTRAR GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**THE DIRECTOR OF BIRTHS AND DEATHS ..... 5<sup>TH</sup> RESPONDENT**

**DIRECTORATE OF IMMIGRATION SERVICES ..... 6<sup>TH</sup> RESPONDENT**

**THE CABINET SECRETARY MINISTRY OF FOREIGN  
AFFAIRS ..... 7<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 8<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The applicants notice of motion dated July 8, 2022 prays for the following orders;
  - (a) That the court be pleased to order the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> respondents to supply the applicants herein through the Deputy Registrar High Court Nakuru with copies of both the 1<sup>st</sup> and 2<sup>nd</sup> respondent’s birth certificates and national identity cards, travel passports and deed poll between the 3<sup>rd</sup> respondent and one K for onward transmission to the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents herein.



- (b) That the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents upon prayer (a) above being issued do avail before this court and supply the applicants through the deputy registrar high court Nakuru with the paternity records in custody both biological and adoptive of the 1<sup>st</sup> and 2<sup>nd</sup> respondents herein CWK of Kenya identity card No3xxxx7 and BKK Kenyan identity card No 3xxxx5.
  - (c) That the documents supplied and or provided in prayer (a) and (b) above be produced as evidence before the trial court in Nakuru CMCC succession cause NoE47 of 2021, in the estate of Peter Arthur Wachira (deceased).
  - (d) That the court grants an order of stay of proceedings in Nakuru CMCC succession cause No E47 of 2021, in the estate of the late PAW pending compliance of prayer 2,3 and 5 above.
  - (e) Costs to be met by the respondents.
2. The application is supported by the sworn affidavit of MKK sworn on even date on his own behalf and that of the rest of the applicants and the grounds on the face of the application.
  3. The applicants deponed that the late PAW was his brother and the 1<sup>st</sup> and 2<sup>nd</sup> respondents claim to be his children. He stated that the respondents were adopted by one K as per their names in their identity cards.
  4. It was further deponed by the applicants that a deed poll was executed between the said K and the 3<sup>rd</sup> respondent. It is therefore necessary that the said deed poll be produced as evidence in the succession proceedings at the lower court. The said documents are necessary for the applicants to counter the argument by the respondents that they are beneficiaries of the deceased estate.
  5. It was also the applicants case that having been adopted by the said K they lost their inheritance in the estate of their late father.
  6. That they further claimed that the court in Misc civil application number E007 of 2022 had made orders declining the prayers as the respondents had not been made parties.
  7. The respondents *vide* the replying affidavit of CW sworn on January 31, 2023 have opposed the application on various grounds. She said that the applicants were on a fishing expeditions having acknowledge that the respondents were the biological children of the late PAW.
  8. The respondents attached several documents indicating that the applicants were well aware of their above status and that it was only later that they decided to file succession proceedings against their father's estate without their knowledge.
  9. She deponed that despite their parents divorcing and necessitating them to relocate to Germany when they were minors they never cut ties with their late father who until his death recognised them as his children.
  10. The respondents went ahead to show chronology of events and meetings they had with the applicants as well as the property left behind by the deceased which essentially, they claim ought to be inherited by them.
  11. The court afterwards directed the parties to file their written submissions which I have perused together with the cited authorities.
  12. The applicants in my view are on a purely fishing expedition. The pleadings as contained in the affidavits filed by both sides acknowledges the fact that the late PAW was the biological father of the 1<sup>st</sup>



and 2<sup>nd</sup> respondents. These is clearly admitted by the applicants in various documents and annexures filed herein.

13. The affidavit by MKK sworn on September 17, 2021 in support of the succession cause at the lower court states in paragraph 8 and 9 as follows;
  8. That furthermore being the biological children of the deceased and failing to know the correct date of death of their biological father, the applicant and his brother are clearly opportunists who had no interest whatsoever in their biological father during his lifetime.”
  9. That the said applicant CWK and her brother BKK are biological children of the deceased brother PAW but they are also adopted children of their adoptive father, one K.”
14. The only dispute is the alleged adoption by one K of the 1<sup>st</sup> and 2<sup>nd</sup> respondent. It also appears that the 3<sup>rd</sup> respondent whom i believe is the mother to the 1<sup>st</sup> and 2<sup>nd</sup> respondent divorced the late W. Whether she divorced before moving to Germany or not is not for this court to determine.
15. What is then the net effect of the alleged adoption to the succession proceedings.? In my humble view I do not think it weighs much for the reason that the provisions of the Law of Succession Act does not indicate that adoption denies anyone inheritance. The Act speaks of children under section 38 of Cap 160. Again that will be for the said court to determine.
16. If then the applicants are aware that the respondents were adopted and it appears the respondents are not objecting to that based on the fact that their passports read the name K, what then is the use of burdening other respondents and in this case the mentioned government agencies for obvious facts.? To me there is no reason at all. All that the parties need to establish is who is entitled to the estate of the later PAW.
17. As stated in the earlier ruling of this court in miscellaneous application No 007 of 2022, the application such as this one at hand must be weight carefully against the constitutional provisions of rights to privacy under the bill of rights. Allowing it for instance shall compromise the respondent’s privacy as well as that of the said K who is not a party to the proceedings herein. In other words, there must be cogent reasons and evidence for the court to grant the same.
18. In this case I find that the applicants have not satisfied this court considering the reasons granted above. In other words, the parties are seized with sufficient evidence for the succession cause to determine the issues in controversy and do not need to involve other independent parties and especially the said K who is at the centre of the alleged adoption.
19. The application is otherwise dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

**DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 20<sup>TH</sup> DAY OF JULY 2023.**

**H. K. CHEMITEI**

**JUDGE**

