



**In re Estate of Samuel Thuo Kamuyu (Deceased) (Succession Cause
1750 of 2008) [2023] KEHC 23485 (KLR) (Family) (6 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23485 (KLR)

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

FAMILY

SUCCESSION CAUSE 1750 OF 2008

MA ODERO, J

OCTOBER 6, 2023

IN THE MATTER OF THE ESTATE OF SAMUEL THUO KAMUYU (DECEASED)

BETWEEN

JOHNSTONE KAMUYU KIMANI APPLICANT

AND

GRACE NJERI THUO 1ST ADMINISTRATOR

KIRUMBA EDWARD THOMAS 2ND ADMINISTRATOR

AND

TABITHA W KAMUYU CO- ADMINISTRATOR

MARGARET W KAMUYU CO- ADMINISTRATOR

RULING

1. Before this Court for determination is the summons dated 17th November 2021 in which the Applicant seeks the following orders:-

- “ 1. That this Honourable Court be pleased to order a consolidation of this cause with Nairobi High Court Succession Cause No. 730 of 1995.
2. That further proceedings in this suit be stayed until further orders.
3. That costs of this application be provided for.”

2. The application was premised upon Section 47 of the *Law of Succession Act*, Cap 160, Laws of Kenya Rules 49, 59 (1)(3) and (5) and Rule 3 of the *Probate and Administration Rules 1980* and all other



enabling provisions of law and was supported by the Affidavit dated 30th November 2021 sworn by Stellar Njoki Kariuki Counsel for the Applicant.

3. The 2nd Administrator for Margaret W. Kamuyu opposed the application vide Grounds of Opposition dated 7th February 2023 as follows:-

- “ 1. That the Applicant has no *locus standi* to bring this application and the same is therefore incurably defective and ought to be dismissed with costs.
2. That this application is inordinate and made as an afterthought.
3. That consolidation cannot arise as the issues for determination before court relates to two different estates.
4. That the two causes do not arise from the same transaction.
5. That the question of law arising from the two causes are different and distinct.
6. That the application is without any merit and does not disclose sufficient reasons as to why two causes should be consolidated.
7. That the application has been made in bad faith and with clear intention to further delay this matter.
8. That the application is a waste of the court’s time and ought to be dismissed with costs.”

4. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 10th November 2022 whilst the 2nd Administrator relied upon her written submissions dated 7th February 2022.

Background

5. This Succession Cause relates to the estate of the late Samuel Thuo Kamuyu (hereinafter ‘the Deceased’) who died intestate on 12th March 2008. The Deceased was survived by his widow Grace Njeri Thuo and two daughters namely:

- (i) Charity Njeri Thuo
- (ii) Faith Mweru Thuo

6. The estate of the Deceased comprised of the parcel of land known as Dagoretti/Waithaka/322 measuring 11 acres (hereinafter the ‘suit land’). This parcel of land was registered in the name of the Deceased.

7. Following the demise of the Deceased his widow and two (2) daughters sought and obtained Grant of Representation to the estate which Grant was issued to them on 18th November 2008.

8. When the matter came up for confirmation of the Grant two of the Deceased’s brother Edwin Kirumba and David Gitau Kamuyu filed an Affidavit of Protest alleging that the ‘suit land’ actually belonged to their late father Thomas Kamuyu Thuo and that the Deceased was only holding the suit land in trust for them.

9. Aside from this Succession Cause there also exists Succession Cause No. 730 of 1995 filed in the High Court in Nairobi which Cause relates to the estate of the late Thomas Thuo Kamuyu who is the father of the Deceased herein. In that Succession Cause No. 730 of 1995 the Deceased was an Objector and



one of the issues for determination was whether the Deceased Samuel Thuo Kamuyu was holding the suit land in trust for his brothers.

10. On 21st November 2008 Hon. Lady Justice Rawal (retired) delivered a ruling in which she held that the Deceased was holding the suit land land in trust for his siblings.
11. It was averred by Counsel for the Applicant that there are two (2) pending applications in Succession Cause No. 730 of 1995 and that the determination of the two (2) applications will substantially affect the proceedings in this Succession Cause. As such Counsel submits that it is necessary to have the two (2) succession Causes Consolidated and further prays to have the proceedings in this cause stayed pending determination of the Succession Cause No. 730 of 1995 or further orders of the court.
12. As stated earlier the application was vehemently opposed.

Analysis and Determination

13. I have carefully considered the application before this court the Grounds of Opposition filed by the Respondents as well as the written submissions filed by the parties.
14. The Respondents claim that the Applicants have no '*locus standi*' in this matter. 'Locus stand' is a Latin term which literally means "place of standing" and refers to the right of a party to file suit or to appear in a particular suit.
15. This matter relates to the estate of one Samuel Thuo Kamuyu. The Applicants are the widow and daughter of the Deceased who would have a greater right to file suit than the applicants.
16. This present application has been filed by the Applicants and is supported by an Affidavit sworn by their Legal Counsel.
17. The Advocate has deponed to matters relating to the progress of the suit which matters are within her knowledge as she is the one handling the suit on behalf of the Applicants. I therefore find that the Applicants do have *locus standi* in this matter.
18. Order 11 rule 3(1) (h) the [Civil Procedure Rules 2010](#) grants a court the power to consolidate suits with a view to furthering the expeditious disposal of matters.
19. In the Indian case of [Brij Kishore v Bir Singh & Others](#) at the High Court of Punjab and Harana (L.R. 5922 of 2013 Justice Paramjeat Singh quoting the decision in the Supreme Court Case of [Prem Lala Nabata & Another v Chandi Prasad Sikaria](#), [2007] 2, Supreme Court Cases 551 at paragraph 18 states as follows:-

“It cannot be disputed that the Court has power to consolidate suit in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the Court combined or united and treated as one cause or matter. The main purpose of consolidation is the therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the Court and it appears to the Court that some common questions of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suit.” [own emphasis]



20. Furthermore, in the case of *Law Society of Kenya v The Centre For Human Rights and Democracy*, Supreme Court of Kenya, Petition No. 14 of 2013, the Supreme Court of Kenya had this to say about consolidation of suits:-

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it.”

21. The key questions that a court must consider in deciding whether or not to consolidate two or more suits are:-

- a) Do the same questions of law or fact arise in both cases?
- b) Do the rights or reliefs claimed in the two cases or more arise out of the same transaction or series of transactions.
- c) Will any party be disadvantaged or prejudiced or will consolidation confer undue advantage to the other party.

22. In this case Succession Cause No. 730 of 1995 relates to the estate of the father of the Deceased in this matter. In both suits the question of the ‘ownership’ of the suit land being Dagoretti/Waithaka/322 is central. It is clear that the two (2) suits are intertwined as both involve determination of the question as to whether the Deceased herein held the suit land in trust for his siblings.

23. It would be prejudicial to the parties if the two (2) suits were heard and determined and separately not to mention the very real possibility of conflicting decisions by different court over the same question. It is my considered opinion that the two (2) suits ought to be consolidated in order to enable the court determine the issue in question expeditiously as well as to avoid any abuse of court process.

24. In view of the circumstances of the two (2) cases I direct that the proceedings in this Succession Cause No. 1750 of 2008 be and are hereby stayed pending the determination of the Objection proceedings in Succession Cause No. 730 of 1995. This being a family matter I direct each side to meet their own costs.

DATED IN NAIROBI THIS 6TH DAY OF OCTOBER, 2023.

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MAUREEN A. ODERO

JUDGE

