



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO.651 OF 2016

IN THE MATTER OF THE ESTATE OF MICHAEL CHEGE MWANGI (DECEASED)

AMS.....APPLICANT

VERSUS

AGNES WANJIKU MWANGI.....1ST RESPONDENT

MONICA NJERI NGOMONGE.....2ND RESPONDENT

RULING

1. This is a ruling on application dated 24th September, 2019. It seeks the following orders:-

- i. Spent.
- ii. Spent.
- iii. That **JMC** an alleged beneficiary undergo DNA sampling to determine his biological relation with the deceased.
- iv. That the applicant bear costs of DNA in the first instance and thereafter if the results are positive the respondent to reimburse the applicant.
- v. OCS Njoro Police Station to ensure compliance.

2. Ground on the face of the application is that the applicant is convinced that **JMC** is not biological son of the deceased; that at no single time has the deceased and the respondent been married and that the deceased never recognized the said **JMC** as his son and never supported him during his life time.

3. That the respondent is abusing the court process by clandestinely introducing the said **JMC** as legitimate child of the deceased.

4. That the intended procedure shall disclose material facts and enable the court determine real issues in controversy.

5. That the estate of the deceased shall suffer prejudice if this application is not allowed. This application is supported by affidavit sworn by the applicant on 24th September 2018.

6. She averred that the respondent insists that the deceased was her husband and that they sired a son by the name **JMC** with him and maintained him during his lifetime.

7. She averred that her position and second applicant is that the deceased died a bachelor and never sired a child.

8. She averred that after consultations they have agreed to seek an order that the deceased be exhumed for sample and that of alleged son be extracted for DNA analysis. That scientific analysis shall disclose the true paternity of the said **JMC**.

9. In response, the respondent **AMS** filed replying affidavit sworn on 27th February, 2017. She averred that they got married to the deceased under Kikuyu customary in the year 1995 and they were blessed with one child **JMC** born on 28th October 1996. She attached a clinic card and birth certificate. She averred that the said **JMC** derived his name from the father of the deceased as per kikuyu customs.

10. She averred that immediately after the said marriage they moved to the deceased's family land and erected a matrimonial home where she resides to date. She further averred that the deceased's welfare including school, the deceased up to his death catered fees and normal basic needs.

11. That the said **JMC** is now a person of age and has never known any other father apart from the deceased and their matrimonial home.

12. She averred that the orders sought by the applicant are outrageous and are meant to embarrass her and her son and further the fact that the said JMC was a dependent of the deceased defeats the necessity of the instant application. That the selfish desires to disinherit her and her son has instigated the filing of this suit; that it is an afterthought filed late in the day with the aim of delaying conclusion of this matter.

13. That the applicants were bequeathed land by the deceased's late father **Joseph Mwangi Muiruri** in equal measures with the deceased. That they have been selling their share and are now eyeing the deceased's portion.

14. She averred that the applicants have not explained to court how the respondent moved into the subject land and why they never protested her stay with the deceased since 1995. She added that if court is in doubt of their dependency it ought to allow the matter to proceed for hearing.

15. She averred that the court ought to take note of the bureaucratic process of exhumation and conducting DNA and dismiss this application.

ANALYSIS AND DETERMINATION

16. I have considered averments by parties herein. I have also perused annexures to the affidavits filed. The applicant has indicated that she is suspicious of paternity of **JMC**. In response, the respondent has attached a birth certificate and clinic card. The birth certificate bears the name of the deceased as the father of the said **JMC** and respondent as the mother.

17. Applicant has not given reasons for her suspicion. Respondent stated that she got married to the deceased in 1995 and has been living with him in matrimonial home bequeathed to the deceased by his father who is also the father of applicant herein. She has indicated that they have lived together in the land since 1995 and they sired a child namely **JMC** in 1996. The birth and details of parents are confirmed by birth certificate attached to respondent's affidavit. The applicant never filed response to discredit the birth certificate and clinic card.

18. From the foregoing, I find that the applicant has not laid a basis for orders sought.

19. FINAL ORDERS

1. Application dated is hereby dismissed
2. No sufficient ground has been proved to warrant exhumation of deceased is remains and DNA testing.
3. Cost of the application to the Respondents.

Ruling dated, signed and delivered at Nakuru this 6th day of February, 2020.

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF:

Jeniffer – Court Assistant

Ms. Mukira holding brief for Chege for Applicant

No appearance for 1st Respondent

No appearance for 2nd Respondent