



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

SUCCESSION CAUSE NO. 1239 OF 2008

IN THE MATTER OF ESTATE OF JAMES KANYOTU (DECEASED)

JANE GATHONI MURAYA KANYOTU.....PETITIONER/RESPONDENT

VERSUS

MARY WANJIKU KANYOTU.....1ST RESPONDENT

CHRISTOPHER NGATA KANYOTU.....2ND RESPONDENT

ANDREW PETER NGIRICI.....3RD RESPONDENT

JOHN KARIUKI KANYOTU.....4TH RESPONDENT

SANDRA NJAU KANYOTU.....5TH RESPONDENT

R U L I N G

1. This rather contentious matter has passed through the hands of several judges since inception in the year 2008 in a bid to settle the issue of who the beneficiaries of the Estate are; and with consent of the parties, on the 13th of March 2014 **Kimaru J** made an order requiring all beneficiaries save for **George Kimondo** who resides in the USA and who was to obtain his DNA samples and send them to Kenya; the other 'children' were to present themselves to **John Kimani Mungai** the Government Chemist at Kenyatta National Hospital at 8.00 a.m. on the 14th of March 2014. The Estate funds were to cater for ensuing costs.

2. A representative of the Government Chemist appeared in court and presented the results of the DNA tests which results were objected to by **Willy Kihara** and **Clint Mathenge** on the allegation that not all the 'children' appeared in the manner and time scheduled by court and therefore the authenticity of the results were doubtful.

3. On 17th of January 2017 before Achode J three issues were agreed upon for determination as follows.

i. Identification of the beneficiaries.

ii. Identification of the assets of the estate, and

iii. The mode of distribution.

4. And on the 5th of May 2017 the court directed the matter do proceed and the DNA matter was left in abeyance. As a result some witnesses testified.

5. When this court took over the matter there was consensus that the issue of DNA was settled save for 2 'sons' namely **Willy Kihara** and **Clint Mathenge**. In issue also was whether **Mumbi Mathenge** is a widow.

6. The view of this court was that DNA test would result in determination of who the beneficiaries are and the court will be left to determine the issue of **Mumbi Mathenge** and thereafter proceed to distribute the Estate. Parties agreed with court, though difference in opinion emerged on how the issue of settling DNA was to be concluded.

7. The Court gave the parties an opportunity to ventilate on the issue. The report of the meetings held by counsel for the parties was *inter alia* that the below mentioned beneficiaries were agreed upon as beneficiaries (children) namely,

1. **John Kariuki**
2. **Sandra Gathoni**
3. **Christopher Ngata**
4. **Stephen Njau (deceased)**
5. **George Irungu Kariuki**
6. **Rose Nyawira Kanyotu**
7. **Grace Nyawira Kanyotu**
8. **Christine Njoki Kanyotu**
9. **George Kimondo**
10. **Stephen Mutero(deceased)**
11. **Rose Nyawira**
12. **George Irungu (deceased)**

8. It was also proposed that **John Kariuki, Sandra Gathoni and Christopher Ngata, George Kimondo** give samples for sibling DNA test with **Willy Kihara and Clint Mathenge** which proposal was agreed upon save for Mr. Odawa for **Clint Mathenge** whose view was that all ‘children’ be subjected to a fresh DNA sibling test.

9. It is noteworthy that three places were suggested by rival parties for possible DNA Test; the **Government Chemist, Lancet Laboratories and KEMRI**. However, there were objections to the matter being referred to the Government Chemist due to the objection by **Willy Kihara and Clint Mathenge** to the 1st report by the said institution, **KEMRI** was also objected to.

10. Considering the age of the matter and the fact that the relationship of those claiming to be beneficiaries as children of the deceased must be settled to pave way for distribution and bearing in mind the consensus amongst most of the parties, it is my view that the most reasonable way to resolve the issue is to subject only two children whose paternity is still in issue namely; **Willy Kihara and Clint Mathenge** to DNA test.

Further it is my view that it is unnecessary to subject all other children whose paternity is not in question to another DNA test.

11. Consequently, I direct that **Clint Mathenge, Willy Kihara, John Kariuki, Sandra Gathoni and Christopher Ngata** be subjected to a sibling DNA test at the **Lancet Laboratory, on Ngong Road** on the 15th of May, 2019 at 10.00 a.m.

12. Costs to be met by the estate.

13. The report be presented to court on the 5th of June, 2019, when further directions will be issued.

DATED, SIGNED and DELIVERED at NAIROBI this 9th DAY OF May, 2019.

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ALI-ARONI

JUDGE