



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**SUCCESSION CAUSE NO. 10 OF 2008**

**IN THE MATTER OF THE ESTATE OF KAGANE M'NJIRU (DECEASED)**

**SALESIO MBOGO JEREMIAH..... APPLICANT**

**VERSUS**

**JOHN NJERU KAGANE**

**LISPER NDINDA KAGANE..... RESPONDENTS**

**R U L I N G**

1. The application is brought by way of summons under Rule 73 of the Probate and Administration Rules. The applicant seeks that he be joined as an interest party to represent the interest of his late father Jeremiah Njiru Kagane. According to him his late father was entitled in law to a share in the estate of the deceased herein. Additionally he has also sought an order for the provision of costs.

2. The applicant gave evidence in support of his application and called Savendi Igandu (P.W.2) and Dominic Njagi (P.W.3) as his witnesses. The applicant testified as P.W.1. His evidence was that the 1st respondent is his paternal cousin and that the 2<sup>nd</sup> respondent is sister to his father. It is his evidence that the two respondents did not inform him that they were going to file this succession cause. He only came to learn that they had filed the succession cause in 2011, that is, three years after it was filed. It was his evidence that the deceased was his father.

3. Under cross examination the applicant testified that his father was Jeremiah Njiru Kagane. He further testified that he did not know a person by the name Kavingiriti. In the same breath he admitted that Kavingiriti was a brother to his grandfather. He denied knowing the mother of the 2<sup>nd</sup> respondent. Furthermore, he categorically testified that he was not going to call his mother as a witness and then turned round to state that he was now going to call his mother as his witness. In the end he did not call his mother as his witness. Finally he admitted that he was given land reference No. Kagaari/Weru/5139 by his clan.

4. Savendi Igandu (P.W.2) testified in support of the applicant. She testified that the applicant is son to his brother and that the 2<sup>nd</sup> respondent is daughter of Kagane. She further testified that the applicant is son of Jeremiah Kagane and that his mother is Susan Rwamba. She further testified that Susan Rwanga is still alive. It was also her evidence that the suit land that is in dispute is the property of Njeru Kagane M'Njiru, whom she testified was her father. She confirmed that Susan Rwamba was not the wife of Kagane M'Njiri. She also testified that the children of Susan Rwamba were not given a share of the estate of the deceased. It was also her further evidence that the applicant was not a member of the four wives of the deceased. She testified that the applicant was a member of the clan. Her further evidence was that

the father of the applicant was Jeremiah Njiru Ruita. Finally she testified that the father of the applicant was not a member of the Kagane family.

5. John Njeru Misheck Kagane (DW 1) testified in opposition to the applicant's application. He testified that the applicant is a member of their clan, but was not a member of the Kagane family. He further testified that the deceased had four wives namely Koori Kagane, Kairu Kagane, Gitete Kagane and Kinyari Kagane. DW 1 testified that her mother was Gitete Kagane, who was the third wife of the deceased. Koori Kagane was the mother of Lisper Ndinda Kagane (DW 2). His further testimony was that the applicant was not a son of any of the four wives of the deceased. He was not their brother. The father of Salesion was Jeremia Njiru Ruita. Jeremia Njiru Ruita was not a son of the wives of the deceased. Lisper Ndinda (D.W.2) adopted the evidence of D.W.1. The respondents also called Monica Igandu (D.W.3). D.W.3 testified that the applicant's father is Jeremiah Ruita and that the latter was not in any way related to the deceased. She finally testified that Jeremiah Ruita was not a member of Kagane family.

6. Hosea Njeru Joseph (D.W.4) testified in support of the respondents case. D.W.4 testified that the applicant was the son of Jeremiah Njiru Waruita. He further testified that Jeremiah Njiru Waruita was brought up in the home of Kavingiriti. Furthermore, he testified that Jeremiah Waruita was a teacher at Kigaa Primary School. Finally he testified that Jeremia Wairuita was brought up in the home of Kavingiriti.

7. In the light of the foregoing evidence I find the following to be the issues for determination. First, whether or not the applicant is a member of the family of the deceased. Second, whether or not the applicant is a beneficiary in the estate of the deceased. Third, who should bear the costs of this application.

8. I have considered the evidence of the applicant and his witnesses and that of the respondents and their witnesses. I do not believe the evidence of the applicant and his witnesses. I find that the applicant was not a truthful witness. Under cross examination he denied knowing a person by the name Kavingiriti and in the same breath he turned round to state that actually Kavingiriti was a brother to his grandfather. Furthermore, he testified that he was not going to call his mother as a witness and turned round to testify that he is going to call his mother as his witness. In the end he decided not to call his mother as his witness and yet the evidence of his mother would have shed light as to whether the applicant was or was not a member of the Kagane family (lineage). I find that the applicant was not a truthful witness.

9. Furthermore, I find that Savendi Igandu(P.W.2) emphatically testified that the mother of the applicant is Susan Rwamba. She further testified that Susan Rwamba was a wife of Kagane M'Njiri. She also testified that the children of Susan Rwamba were not given any share in the estate of the deceased. The evidence of this witness supports that of the respondents that the applicant is not a member of the Kagane family.

10. The respondents led evidence through John Njeru Misheck Kagane (D.W.1), Risper Ndinda (D.W.2) and Hosea Njeru Joseph (D.W.4). John Njeru Kagane (D.W.1) testified that the 2nd respondent is his aunt. He further testified that Kagane M'Njiru is his grandfather. He also testified that the applicant was not a member of the four wives of the deceased in this cause. He further testified that the applicant was simply a member of the clan. His further evidence was that Jeremiah Njiru Ruita was the father of the applicant. He further testified that when Jeremiah Njiru Ruita died, a sister of the applicant filed a succession cause in respect of their father's estate. The outcome of those succession proceedings was that the applicant was given five acres of land at Weru. He finally testified that the applicant's father, Jeremiah Njiru Ruita was not a member of the Kagane family. Lisper Ndinda (D.W.2) adopted the evidence of D.W.1.

11. Furthermore the respondents called Monica Igandu (D.W.3). D.W.4 testified that the applicant's father is Jeremiah Ruita. She further testified that this Jeremiah Ruita was not related to Kagane M'Njiri. She further testified that Jeremiah Ruita was not a member of the Kagane family.

12. The last called by the respondent was Hosea Njeru Joseph (D.W.4). He testified that the applicant was the son of Jeremiah Njiru Waruita. He further testified that Jeremiah Njiru Waruita was brought up in the home of Kavingiriti. He also testified that Jeremiah Waruita was a teacher at Kigaa Primary School.

13. I have considered the evidence of the applicant and his witness and that of the respondent and their witnesses. I find that the evidence of the applicant and his witnesses is not truthful. Firstly, the applicant (P.W.1) was not a truthful witness. I found him to be evasive on obvious questions in relation to members of his family. It is telling that he did not call his mother as a witness. This was a potentially crucial witness to shed light as to whether the applicant was a member of the Kagane family or not. I find that the evidence of Savendi Igandu (P.W.2) supported the evidence of the respondents that the applicant was not a member of Kagane family.

14. It was her evidence that Susan Rwamba is the mother of the applicant and still alive. It was also her evidence that Susan Rwamba was a wife of Kagane M'Njiru, who is the deceased in this case. From the evidence of this witness it is clear that the applicant is not a member of Kagane family. This evidence supports the cogent, consistent and truthful evidence of the respondents (D.W.1, 2, 3 and 4) that the applicant was not a member of the Kagane family. In the circumstances, I find that the applicant is not a member of Kagane family. It therefore follows that he is not a beneficiary in respect of the estate of the deceased within the meaning of section 39 (1) C of the Law of Succession Act (Cap 160) Laws of Kenya, since he is not a child of the deceased.

15. In the light of foregoing, I hereby dismiss the applicant's application with orders as to costs.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this **15<sup>th</sup>** day of **SEPTEMBER 2016**

In the presence of both the applicant and Mr. Okwaro for the 2nd respondent and also holding brief for Mr. Andande for the 1st Respondent.

Court clerk Njue

**J.M. BWONWONGA**

**JUDGE**

**15.09.16**