

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

SUCCESSION CAUSE NO. E006 OF 2023

IN THE ESTATE OF JOHN KISILU KISIMBI

ANNASTACIA MBIKU KISIMBI 1ST

PETITIONER

BENJAMIN KISIMBI KIVUIYA 2ND

PETITIONER

-VERSUS-

JUDITH KANANU KISILU

OBJECTOR

RULING

- 1)** Before me in the summons dated 1/8/2023 filed on 25/9/2023. It is brought by Judith Kananu Kisilu under section 47 of the Law of Succession Act, Rule 73 of P& A Rules. The Petitioners are the parents of her deceased husband.
- 2)** The applicant seeks orders: - that this cause be struck out for being an abuse of the court process.
- 3)** The main reason for this is that there is an existing succession Cause No. 1686 of 2016 pending

before the high court in Nairobi, a fact the petitioners have concealed from this court.

- That the petitioners did not seek the consent of the applicant/the children of the deceased when they filed this cause.

- 4) The application is supported by the affidavit of Judith Kananu Kisilu - the widow of the deceased herein. She has annexed a certificate of marriage, the copies of the pleadings in Nairobi Succession Cause 1686/2016 - Estate of John Kisilu Kisimbii (deceased) certificate of death of the deceased and the form P & A 5.
- 5) There is a replying affidavit by the 2nd petitioner one Benjamin Kisimbii Kavuiya who confirms that a grant of letters intestate was made to the applicant Judy Kananu Kisilu - & Angelica Kathure Muriithi in Nairobi - Succession Cause 1686/2016 Milimani High Court.
- 6) That the grant was revoked vide a ruling of the court dated 24/9/2021 hence there is no valid grant in the matter. He depones that the grounds for the said revocation was because the applicant herein had not

involved the parents of the deceased, and had concealed the other children of the deceased from the court.

- 7) That the deceased hails from Makueni, all his properties are in Makueni County and there was no reason to file the cause in Nairobi, other than a fraudulent one.
- 8) That the applicant herein was informed of this petition vide letter dated 8/5/2023 to which her counsel responded on 31/5/2025.
- 9) The applicant filed a supplementary affidavit where she referred this court to the form P & A 5 - that the petitioners herein are reflected as surviving their son, and that the properties of the deceased are not wholly in Makueni.
- 10) Further that the applicant has filed an application in the Nairobi Cause for her adult children to be appointed as administrators of the estate of their father.

- 11) Parties took directions to file submissions. I have seen the submissions of the applicant, none from the petitioners/respondent.
- 12) The only issue is whether the summons has merit; whether the current petition ought to be struck out.
- 13) The applicant raises the issue for determination - whether the respondents have the capacity to become the Administrators of the estate of the deceased while his widow and adult children are alive?
- 14) I have carefully considered the rival affidavits, the annexures - in particular the ruling of the judge in Nairobi Succession Cause 1686/2016 dated 24/9/2021 and the submissions before me.
- 15) It is not in dispute that the applicant is the widow of the deceased and the petitioners/respondents are the parents of the deceased.
- 16) Section 66 of the Law of Succession Act is clear on who has priority when it comes to grant of letters of administration of estate intestate - the widow ranks in priority. It states:

66. Preference to be given to certain persons to administer where deceased died intestate

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference

(a) surviving spouse or spouses, with or without association of other beneficiaries;

(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

(c) the Public Trustee; and

(d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the

intestate estate shall be granted to any executor or executors who prove the will

- 17) It is not in dispute that the grant issued to the applicant was revoked in the Nairobi Cause. Hence as it is now there is no administrator for the estate. The petitioners/respondents appear to have/to hold the belief/understanding that the moment the grant issued to the applicant was revoked, the Nairobi cause was also brought to an end and that in itself gave them the freedom to file their own cause.
- 18) I can only say here that clearly they were mistaken. The cause in Nairobi 1686/16 was not dismissed - the file was not closed - the Hon. Judge only allowed the application to revoke the grant issued to the applicant because firstly - she had not included all the beneficiaries, had not obtained the requisite consents - and had included a stranger to the estate to become an administrator.
- 19) From the affidavit sworn by Benjamin Kisimbii, the petitioners/respondents reasons for filing this

cause are the reasons that led to the revocation of the grant in the 1st place;

- Their non-inclusion
- The allegation that other beneficiaries had been left out

20) The Hon Judge while revoking the grant issued to the applicant herein clearly indicated that some of these issues were to be determined in a hearing not through affidavit evidence. It was expected that the matters would be addressed in that same cause. There is nowhere in that ruling that the court granted the petitioners herein the power to file another cause to address the issues they had raised in their objection.

21) The question then is: was there a substantive succession cause in the court system when they filed this cause ?

22) Yes - there is pending before the Mililimani court an active succession cause with respect to the estate of John Kisilu Kisimbii (deceased), it was filed before the cause before me - and if the petitioners

thought why needed to file one in Makueni – the proper procedure was to have the same transferred to Makueni .

- 23) There cannot be two succession causes over the same estate – running at the same time – and the petitioners/respondents ought to have revealed that there was indeed a cause in Nairobi over the same estate.
- 24) The petitioners/respondents are not without recourse as the issues they raised in their objection are on the record in the Nairobi matter and ought to be canvassed in the cause in Nairobi and any application for transfer ought to be made in that cause.
- 25) The deceased properties are not all in Makueni – others are elsewhere. The issues sought to be addressed in this cause ought to be addressed in the cause in Nairobi – i.e Nairobi Succession Cause 1686/2016;The applicant is the one with priority as per section 66 of the Law of Succession Act to obtain letters of administration.

26) Parties are encouraged to discuss as a family - the widow, the grandchildren and their grandparents - to present the development of family bad blood in the spirit of Article 159(2) (c) of the Constitution

27) In these circumstances, I must find that this cause was wrongfully filed, the petitioners ought not to have filed another cause while the other one was pending, and committed the same error they were accusing the applicant of, non-disclosure. I must find that the application has merit and that this succession cause herein E006/2022 is an abuse of the court process.

28) This cause is therefore struck out- with no orders as to costs

Dated, signed and delivered this 24th October 2025

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Mumbua T. Matheka
Judge

Court Assistant - Chrispol

Counsel for Applicant Kalwa for Objector Applicant

Mulu Counsel for Petitioners/Respondents

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