



In re Estate of the Late GGK (Deceased) (Succession Cause E007 of 2025) [2025] KEHC 18313 (KLR) (5 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18313 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
SUCCESSION CAUSE E007 OF 2025
AK NDUNG’U, J
DECEMBER 5, 2025
IN THE MATTER OF THE ESTATE OF THE LATE GGK – (DECEASED)**

BETWEEN

CMW APPLICANT

AND

PMK 1ST EXECUTOR

RMK 2ND EXECUTOR

JWK 3RD EXECUTOR

RMK 4TH EXECUTOR

JWN 5TH EXECUTOR

RULING

1. The Applicant moved this court by way of Summons dated 20th December 2025 where he sought the following orders;
 - 1) That PMK and CMW do undergo Deoxynbonucleic Acid (DNA) tests to determine the paternity of CMW.
 - 2) That the costs of this application be provided for.
2. The application is based on the following grounds reproduced verbatim thus:-
 1. That he is an adult male of sound mind and disposition hence competent to swear this affidavit.
 2. That he is the applicant herein hence competent to swear this affidavit in support of the summons.



3. That he is the look alike son of the deceased arising from a relationship between the deceased and his mother GW who is also deceased.
 4. That before the demise of his mother, she left a note expressly stating that the deceased was his father.
 5. That the deceased was at all times during his lifetime providing for the needs of his mother and him.
 6. That owing to the denial of his paternity by the Respondents herein, he is advised by his advocates on record which advice he holds as sound that DNA testing is appropriate to prove beyond reasonable doubt the issue conclusively.
 7. That he is advised by his advocate on record that this honourable court has unfettered jurisdiction to order for DNA testing.
 8. That he believes that the issues that have been raised in the matter cannot be conclusively dealt with without first establishing the relationship between the deceased and himself.
 9. That he believes that allowing for DNA testing will resolve the dispute herein as the same will put to rest the issue of his identity.
 10. That the summons filed herewith is merited and he therefore urges the court to grant the orders sought.
3. The application is supported by the Applicant's affidavit which, by and large, reiterates the averments in the grounds.
 4. The application is opposed and in Replying affidavit, RMK depones that he is the eldest child son of the late GGK (Deceased) who had (5) children of the deceased, to wit RM, PM, JW, JW and RM. That his father had no other children.
 5. He states that 2nd Respondent PMK does not wish to and cannot be forced to subject himself to DNA testing against his wish as this would be a violation of his constitutional rights to privacy and dignity.
 6. That furthermore, it beats logic why the Applicant would choose P in particular for DNA testing, yet he does not claim P to be his father. He seeks to know of what probative value would be such a test result. Secondly, why P in particular, and not any other relative of the Deceased – his children, brothers, sisters, step-brothers, cousins etc all of whom would no doubt share some common DNA traits with the Deceased.
 7. He maintains that the present application for DNA testing is a continuation of the Applicant's vexatious fishing expedition, and is bad in law and an abuse of court process. That the Applicant had previously unsuccessfully sought DNA testing of the Deceased himself in Nyahururu HCC No. 35 of 2017, Charles Maina Vs. PM & Others. That the suit was dismissed with costs.
 8. That the Applicant's only claim to lineage of the Deceased herein seems to be what he claims to be a striking resemblance between him and the Deceased. Whereas he cannot comment on any such alleged resemblances as he does not know and he has never met the Applicant, nevertheless, mere physical resemblance can never be evidence of paternity and there are a lot of people who bear striking physical resemblance to each other and yet are not even remotely related. Indeed, he knows of several public/ political figures in this country who are reputed to resemble his late father the Deceased herein, yet they are not in any way related to their family.



9. That the Applicant herein is a total stranger to his family and is a mere busybody driven by his quest for unjust enrichment from his late father's Estate.
10. That the Applicant's supposed rights as claimed herein cannot be superior to and cannot override the rights of the 2nd Respondent to compel him to undergo DNA testing against his will. He urges the court to dismiss the instant application.
11. The application was canvassed by way of written submissions.
12. I have considered the application, the grounds in support as well as the affidavit evidence on record. I have had due regard to the submissions made and case law cited and the applicable law.
13. The Applicant seeks a DNA test to determine his paternity. The record of the proceedings shows that he seeks to be recognized as a beneficiary of one GGK (deceased). He seeks that his samples be compared with those of PMK (P). It is not particularly set out in his grounds in support of the application and the supporting affidavit why he specifically picked P and no one else. In a supplementary affidavit sworn on 18/3/25 he has deponed that his mother had told him that RMK was not a son of the deceased.
14. The Respondents maintain that P does not wish to and cannot be forced to be subjected to a DNA test against his wish. That it would amount to violation of his rights to privacy and dignity.
15. It is urged that the applicant is on a fishing expedition as he had failed to secure DNA testing using the sample of the deceased himself in Nyahururu HCCC No. 35 of 2017.
16. Reflecting on the facts and prayers made, I must raise the pertinent question on the purpose of a DNA testing in circumstances like the ones before the court. The Applicant seeks to establish that he is a son to the deceased. He seeks to achieve that through a sample of a person whom, one might surmise, is a son of the deceased. Whether that in itself is a proven fact is an issue one can ponder.
17. The 2nd issue to grapple with is the question of discrimination. Even assuming such an order is available to the Applicant (and we will soon find out), there is the unanswered question on why the Applicant picked P and nobody else. He has attempted to explain why he never picked on RMK maintaining that he was told by his mother that R was not a son of the deceased. Here, I think the Applicant crossed the red line. He has stated on oath a serious personal issue of another individual in a negative way with abandon. I say no more.
18. The Applicant has not explained why he did not pick on the other siblings of P. There being no particular reason why P was picked, my view is that this being an intrusion into his right to privacy and dignity, and without any basis laid for his targeting, he has every right to decline.
19. More importantly, there is no law and it is an absurdity to require an assumed son of someone to provide DNA sample to aid the determination of the paternity of another who purports to be the son of the father of the said person. Such a person would in my view have no legal obligation to undertake the test.
20. Counsel for the Respondent has put it concisely that DNA testing between siblings cannot determine the paternity of either of them. Only testing between a child and its putative father can determine such child's paternity.
21. The courts have variously addressed the sensitive question of DNA testing thus establishing guiding jurisprudence on the matter.



22. The Court in SWM versus GMK [2012] eKLR held as follows:-

“Ordering the respondent to provide DNA for whatever reason is intrusion of his right to bodily security and integrity and also the right to privacy which rights are protected under the bill of rights. The Petitioner bears the burden of demonstrating to the Court the right she seeks to assert or vindicate, and which right the Court would consider as overriding the respondent’s right.”

23. In MKK versus LGI [2021] eKLR the court stated that:-

“In the Indian case of Bhabani Prasad Jena versus Convener Sec Orissa, Civil Appeal Nos. 6222-6223 of 2010, the issue of forced DNA was addressed in the following terms: - “The court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA is eminently needed. DNA in a matter relating to paternity of a child should not be directed by court as a matter of course or in a routine manner, whenever such a request is made. The court has to consider diverse aspects...pros and cons of such order and the test of ‘eminent need’ whether it is not possible for the court to reach the truth without use of such test.”

24. Odunga J (as he then was) in the case of R.M.K VS A.K.G & Attorney General, Petition No. 18 of 2013, opined that;

“The Petitioner stated that the court should order a DNA test nevertheless as the facts in the deposition have not been challenged. As I have observed, the burden remains on the petitioner to establish by pleadings and evidence sufficient nexus between him and the respondent in order to persuade the court to grant the orders. In this case there is no evidence to support such a course.”

25. Looking at the circumstances of this case I am of the considered opinion that the singling of P alone for DNA test is discriminatory. Further, the burden remained on the Applicant to establish by pleadings and evidence sufficient nexus between him and the respondent that would warrant the issuance of such an intrusive order against P. Suffice it to note that P cannot be by any fathomable parameters be obligated to help resolve disputed paternity issues between the Applicant and the concerning the Deceased.

26. I hasten to add that in my view, it is upon an individual, and especially when they are adults, to resolve paternity issues with the alleged father during the lifetime of a deceased. Attempting to do so through DNA testing of the other children of the person upon his demise must be frowned upon. Who knows. They may as well not be children of the deceased!

27. With the result that the application lacks merit and is dismissed.

28. In the circumstances of the case, I direct that each party bears their own costs.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF DECEMBER 2025

A.K. NDUNG’U

JUDGE

