



THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY MISCELLANEOUS CASE NO. E270 OF 2023
IN THE MATTER OF THE ESTATE OF JOSEPH WAWERU
NG'ANG'A (DECEASED)

GEORGE NJUGUNA KELLY 1ST

APPLICANT

DENNIS LEMAYAN KELLY 2ND

APPLICANT

**ESTATE OF HUMPHREY NG'ANG'A
KELLY (DECEASED)**
APPLICANT

VERSUS

CHARLES NDUNG'U 1ST

RESPONDENT

BENSON NG'ANG'A 2ND

RESPONDENT

ESTHER WAMBUI 3RD

RESPONDENT

ELIJAH KIMEMIA 4TH

RESPONDENT

DANIEL NJUGUNA 5TH

RESPONDENT

VICTOR MAINA	6TH
RESPONDENT	
SIMON NJOROGE	7TH
RESPONDENT	
GLADYS NJERI	8TH
RESPONDENT	
DORCAS WAIRIMU	9TH
RESPONDENT	
PETER WAINAINA	10TH
RESPONDENT	

RULING

1. This ruling relates to the application dated **13th December, 2023** filed by the Applicants, George Njuguna Kelly, Dennis Lemayan Kelly and Estate of Humphrey Ng'ang'a Kelly (Deceased), seeking for **ORDERS THAT:**
 1. ***Spent.***
 2. **The deceased's grave situate in Kiambaa Sub - County, Kiambu County be unsealed and opened to exhume his remains with a view of harvesting samples therefrom for purposes of Deoxyribonucleic Acid (D.N.A) tests.**
 3. **Officers of the Kenya Medical Research Institute do undertake/oversee the disinterment and do harvest the necessary samples for D.N.A testing.**
 4. **The Police Officer Commanding Kiambaa Sub - County station and/or proximate to the late JWN burial site and the medical officer of Health Centre of Kiambaa Hospital or any other**

proximate to the subject deceased burial site do oversee the implementation of deterring/exhumation orders herein.

5. The Applicants namely: George Njuguna Kelly, Dennis Lemayan Kelly and the children of Humphrey Ng'ang'a Kelly (deceased) to present themselves to Kenya Institute of Medical Research within 7 days or earlier after exhumation and harvesting of the DNA sample of the deceased for sample testing and comparison.

6. The DNA examination results/findings on the subject be filed in court by the respective examining institute within thirty (30) days after the DNA examination.

2. The application is based on the grounds thereof and supported by affidavit sworn by George Njuguna Kelly on **13th December, 2023** who *inter alia* avers that the Applicants are the biological children of the late Joseph Waweru Ng'ang'a and Sophia Kalai Waweru, making them half-siblings to the Respondents, who were born to the father's first wife, Mary Wangui. The narrative details a long-term domestic and business partnership between the Applicants' parents beginning in 1965, which saw the establishment of a successful photography studio empire across Kitale, Kisumu, Webuye and Eldoret. Despite a separation in the 1990's, the father allegedly maintained a close relationship with the Applicants, providing financial

support and entrusting the first Applicant with sensitive information regarding high-value Nairobi properties.

3. Following the father's death in 2014, the Respondents initially recognized the Applicants' paternity by involving them in burial rites and suggesting a unified management of the multi-billion shilling estate at a meeting in the family-owned Africanna Hotel. However, this cooperation soured in 2016 when the 2nd Respondent offered a settlement of **Kshs. 88,000,000/=** in exchange for the Applicants waiving their inheritance rights, an offer the Applicants accepted to preserve family unity despite it being a raw deal.
4. The dispute culminated in the Respondents allegedly orchestrating the Applicants' arrest in Kitale and subsequently disowning them as strangers, leaving the Applicants in a state of destitution while the Respondents retain control over the entire estate.
5. The application is opposed vide grounds of opposition dated **20th March, 2024**, notice of preliminary objection dated **25th October, 2025**, replying affidavit sworn by Benson Ng'ang'a on **19th March, 2024** and supplementary affidavit sworn by Mary Wangui on **19th October, 2024**.
6. The grounds of opposition and notice of preliminary objection are based on the grounds that the Respondents are seeking to strike out the entire suit with costs, asserting that the legal action is fundamentally flawed due to procedural irregularities, a lack of territorial jurisdiction and non-compliance with the Civil Procedure Act.

7. They argue that the Applicants lack the legal standing to bring the claim and have failed to demonstrate a valid cause of action or any obligation owed to them by the Respondents. They contend that the request for exhumation and DNA testing is an extreme measure that is unjustified in this instance, as the Applicants have not proven a sufficient relationship to the deceased or shown compelling circumstances that would override the family's right to peace. They maintain that such an order would be culturally and religiously offensive, causing undue emotional distress to the grieving family.
8. Ultimately, the Respondents characterize the application as a bad-faith abuse of the judicial process intended solely to harass and embarrass the deceased's family after an unexplained and lengthy delay.
9. Mary and Benson aver *inter alia* that they are the widow and children of the deceased Joseph Waweru Ng'ang'a. They vehemently oppose the Applicants' claims, asserting that the Applicants and their mother are total strangers with no familial, marital or business ties to the deceased. They maintain that the deceased was in a monogamous marriage and operated his businesses as a sole proprietor, thereby rendering the application for exhumation and DNA testing an unsubstantiated and incompetent abuse of this court.
10. James Karoki, James Gitau Ng'ang'a, Jacinta Wangui Ng'ang'a, George Njuguna Kelly and Jacinta Wangari Ng'ang'a have filed further affidavits on April, 2024 and

May, 2024 in support of the application dated 13th December, 2023.

11. They aver inter alia that they are the deceased's step-brothers, sister and sister-in-law. They refute claims that the Applicants are strangers to the deceased and state that the deceased lived openly with Sophia Kalai Waweru as husband and wife and fathered three children with her: George Njuguna Kelly, Dennis Lemayan Kelly and the late Humphrey Ng'ang'a Kelly.
12. The deceased's step-brother, James Gitau Ng'ang'a, acting as the family chairman, affirms that the Applicants are biological children of the deceased and that the family has long been aware of their existence. Multiple family members recount that the deceased's own father, Joseph Ng'ang'a Gatimu, personally named the first child, Humphrey, after himself, thereby formally acknowledging the boy as his grandson.
13. Jacinta Wangari Ng'ang'a, the deceased's sister-in-law, avers to seeing Sophia Kalai Waweru working alongside the deceased at his business, Mwangaza Studio, and provides a photograph as evidence of their association.
14. George Njuguna Kelly presents a phenotypic assessment report from a consultant pathologist that identifies significant craniofacial similarities between the Applicants and the deceased, supporting a genetic relationship.
15. It is averred that the deceased paid for his children's education and that the Respondents even contributed to the funeral expenses of Humphrey Ng'ang'a Kelly, contradicting their assertions that they did not know the

Applicants. They conclude that the Respondents are intentionally misrepresenting the facts to exclude the Applicants from their rightful inheritance.

16. The Applicants have filed written submissions dated **24th October, 2025** citing various authorities in support of their application.
17. The Respondents have filed written submissions dated **30th October, 2025** citing various authorities in opposition to the application.

ANALYSIS AND DETERMINATION

18. I have perused the application before me as well as the written submissions.
19. It is evident that there is another Succession Cause **No. 283 of 2014** filed at the Kitale High Court by Mary Wangui Waweru Benson Nganga Waweru and Charles Ndungu Waweru who are the Respondents herein.
20. In that matter the grant was confirmed on 28th January 2016 and the estate distributed. The affidavit of George Njuguna Kelly sworn on 21st May 2025 in support of the application dated 21st May 2025 speaks as much.
21. If that is the case, and none of the Applicants has denied, then the best place to deal with this matter is the Kitale cause as that was first filed and it deals with the deceased estate herein. The filing of this cause was therefore duplex and I do not find any reason at all to proceed with it.
22. **So as to save on judicial time I hereby dismiss this suit entirely and direct the Applicants to agitate their rights under the above Kitale cause.**

23. **Costs shall be in the cause.**

**Dated signed and delivered via video link this
19th day of March 2026.**

**H K CHEMITEI
JUDGE**