



In re Estate of Gedion Rimbere alias Gedion M'Rimbere (Deceased) (Succession Cause 152 of 1993) [2025] KEHC 2269 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2269 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 152 OF 1993
EM MURIITHI, J
FEBRUARY 27, 2025**

BETWEEN

CHARLES KIRIINYA RIMBERE PETITIONER

AND

CATHERINE MWARI MUREITHI RESPONDENT

RULING

1. By a Notice of Motion dated 23/3/2023 pursuant to Sections 81 and 47 of the [Law of Succession Act](#), Rule 73 of the Probate and Administration Rules and all other enabling provisions, Kenneth Mugambi Kirinya seeks that, “This Honorable Court be pleased to substitute the deceased Charles Kiriinya Rimbere who is the Petitioner/Applicant in this suit with Kenneth Mugambi Kirinya as the legal representative of the Petitioner/Applicant.”
2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of Kenneth Mugambi Kirinya, sworn on even date. He avers that the deceased Petitioner died on 21/9/2022 during the pendency of this cause. He is a son to the deceased Petitioner and has obtained letters of administration Ad Litem for purposes of proceeding with this case.
3. Kenneth Mugambi Kirinya swore a supplementary affidavit on 31/10/2024 in support of his application.
4. The Respondent opposed the application by her replying affidavit sworn on 18/10/2024. She avers that the application is not only procedurally improper but legally untenable, and cites *Re Estate of Korir arap Malakwen - (Deceased) (Succession Cause 459 of 2014) [2024] KEHC 10913 (KLR) (20 September 2024) (Ruling)* and *Nyoro v Nyambura (Environment and Land Appeal E072 of 2023) [2024] KEELC 3477 (KLR) (30 April 2024) (Judgment)*.
5. The Respondent swore a further affidavit on 2/11/2024 in opposition to the application, and cites *Mary Gathoni & another v Frida Airi Otolu & another (2020) eKLR*. She avers that Charles



Kiriinya was allocated parcel No. Ntima/Ntakira/3 which he subsequently transferred to himself and subdivided into L.R No.s Ntima/Ntakira/3687 – 3693, and thus his son, Kenneth Mugambi Kirinya or his survivors have no interest whatsoever in the estate herein. The contention by Kenneth Mugambi Kirinya that the case is pending hearing and determination is grossly misconstrued, misleading, red herring and an act of perjury poised to give an impression that there is a pending case or application before this court. The application is inept, defective, ill-advised, bad in law, brought in bad faith, an afterthought, uncanny, shadowy, mischievous and a designed attempt to join a party to the proceedings in order to frustrate her, which should be dismissed with costs in limine.

Submissions

6. Kenneth Mugambi Kiriinya urges that there is need to substitute the deceased Petitioner with him to enable the conclusion of the distribution of the estate. He urges the court to allow the application or in the alternative to invoke its jurisdiction under Section 47 of the *Law of Succession Act* and revoke the grant. He relies on Re Estate of James Kisala Ogwuma (Deceased) (2021) eKLR to fortify his submissions.
7. The Respondent insists that the application is a nullity and void ab initio because it was filed by a deceased Applicant, and cites Manyange (Deceased) v TG (*Minor suing through her mother and next friend WMG*) (*Civil Appeal E005 of 2022*) [2024] KEHC 1083 (KLR) (7 February 2024) (Ruling). She urges that Charles Kiriinya already transferred his share of the estate to himself, and his personal representatives have withheld titles belonging to the other beneficiaries to frustrate the administrator in discharging her mandate, and cites Re Estate of Githinji Njaruiru (Deceased) [2021] eKLR. She urges the court to find the application as lacking in merit, an abuse of the court process and brought in bad faith.

Analysis and Determination

8. Before delving into the merits of the application, the court notes that the application has been filed in the name of Charles Kiriinya, who died on 21/9/2022 way before the application was filed on 23/3/2023. The court finds that omission on the part of Kenneth Mugambi Kirinya to be a technicality which is curable under Article 159 of *the Constitution*, and the court will proceed to render substantive justice to the parties, bearing in mind the supporting affidavit has been properly sworn by Kenneth Mugambi Kirinya.
9. On the merits, the issue for determination is whether the application is merited.
10. The *Law of Succession Act* does not envisage substitution of a deceased Petitioner or Administrator in the terms sought by Kenneth Mugambi Kirinya.
11. Section 81 of the *Law of Succession Act* is a self-executing provision which empowers a surviving administrator to complete administration of an estate as follows:

“Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:

Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.”



12. In Re Estate of Githinji Njaruiri (Deceased) (Supra) cited by the Respondent, the court (L. Njuguna J), said that:

“It is of importance to note that only one administrator passed on while the other two are still alive. Under Section 81 of the Law of succession Act, in the event of the death of one or more of joint administrators, where there are several administrators, the surviving administrator or administrators would then have the mandate to continue with their duties to completion without the need to replace the deceased ones.”

13. Similarly, in Re Estate of George Ragui Karanja (Deceased) [2016] eKLR, the court (W. Musyoka J.) restated that:

“The Law of Succession Act does not expressly provide for substitution of personal representatives who die in office, particularly in cases where the estate is left without one. The closest provision is section 81 of the Act, which provides for vesting of the powers and duties of personal representatives in the survivor or survivors of a dead personal representative.”

14. This court finds that the death of Charles Kiriinya did not create a vacuum in administration of the estate, because the co-administrator, the Respondent herein, aptly took up that mantle, in accordance with her duties under section 83 of the Law of Succession Act.

15. This court, in the spirit of section 47 of the Law of Succession Act, which enjoins it to make all necessary orders for the ends of justice to be met, finds that the substitution sought is an absurdity not contemplated in law, which will result in unreasonable delays in the conclusion of this otherwise very old matter.

Orders

16. Accordingly, for the reasons set out above, the Court finds that the application dated 23/3/2023 is without merit and it is dismissed.

17. There shall be no order as to costs.

Order accordingly.

DATED AND DELIVERED THIS 27TH DAY OF FEBRUARY, 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Mwendwa Advocate for Petitioner.

Mr. Wambua Advocate for Respondent.

