



REPUBLIC OF KENYA



Kimanga & 2 others v Kimanga & another; Irungu & another (Interested Parties) (Succession Cause 1728 of 2000) [2025] KEHC 3770 (KLR) (Family) (27 March 2025) (Judgment)

Neutral citation: [2025] KEHC 3770 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1728 OF 2000
HK CHEMITEI, J
MARCH 27, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE MWANGI KIMANGA (DECEASED)

BETWEEN

**JANE WAMAITHA KIMANGA 1ST RESPONDENT
ALICE WANJIKU MWANGI 2ND RESPONDENT
MARY WAITHERA KIMANGA 3RD RESPONDENT**

AND

**PRISCAH WANJIKU KIMANGA 1ST APPLICANT
STEPHEN MAINA KIMANGA 2ND APPLICANT**

AND

**GERALD IRUNGU INTERESTED PARTY
ALICE WANJIRU INTERESTED PARTY**

JUDGMENT

1. The reference by the Applicant dated 29th May 2023 is seeking orders that:-
 - (a) The bill as taxed be set aside and or dismissed
 - (b) The costs of the objection await finalization of Succession Cause No. E1445 of 2020- Nairobi involving the parties.
 - (c) In the alternative an order for the bill to be taxed item by item by another taxing master.
 - (d) Costs to the Respondents



2. The application is premised on the sworn affidavit by Stephen Kimanga dated even date and the grounds thereof.
3. The basis of the reference is that the taxing master arrived at the decision while relying on a unilateral valuation of the properties without any legal basis as regards the ownership. The said properties were held by various shareholders and not the deceased alone.
4. The said bill according to him was speculative as the valuation report did not attach any searches or the location of the same and were lifted from the will and further that the taxing master failed to consider each property separately
5. That the taxing master failed to take into consideration the existence of cause No. E1445 of 2020 between the same parties.
6. Finally, that the issue of the Respondent's locus in the entire proceedings had not been determined.
7. The reference was opposed vide the sworn affidavit of Wangalwa Oundo counsel for the Respondents dated 7th June 2023 in which he supported the findings of the taxing master and that the reference could not stand as the Applicant was a person of means.
8. Alternatively, he prayed that the amount so taxed be settled by the Respondent through paying half and the balance be deposited in a joint interest earning account.
9. I have read the entire ruling by the taxing master as well as the submissions by the parties.
10. What is in contention is not necessarily that the Respondents are not entitled to the costs. I think the issue is whether in light of the valuation done and used by the Respondent the same can be termed as an accurate representation of the deceased assets and therefore could form the basis of the bill of costs.
11. I agree with the Applicants that there was no evidence of ownership of shares in various companies by the deceased the late Benson Mwangi Kimanga. No. searches were exhibited before the taxing master in form of CR12 or such other documentary evidence from the company's registry.
12. At the same time there were no searches from the Ministry of Lands to show the deceased ownership of the properties. In essence the valuers relied on narrations from their instructing clients and the deceased Will.
13. It is also noted that most of the properties mentioned formed part of the contested Will. The same was made in 1994 while the deceased died in 1999. It would have been prudent therefore to have evidence as stated above of actual ownership of the properties by the deceased.
14. It would have been necessary for the taxing master to go item by item in the bill and specifically asset per asset so as to come to a reasonable conclusion. I find it too general for the court to state that:

“Having put the value of the estate as above in exercise of my discretion, I'm of the considered view that the instruction fees of Kshs.40,000,000 will suffice in the circumstances. I therefore tax item 1 at Kshs.40,000,000 and tax off Kshs.18,510,120.”
15. Finally, it is without doubt that this matter was closed when the court directed that another petition be filed according to the deceased's Will. That has been done as acknowledged above. The implication therefore is that the outcome of that cause No. 1445 of 2020 will impact this cause by virtue of the fact that whatever the costs granted to the Respondents will form part of the estate's liability in the final analysis.



16. I state so because what was before court was not the Applicant's personal suit but the estate of the deceased herein. They litigated wrongly as found by the court which held that since there was a Will, they should pursue a probate cause. They have complied. The safest route therefore in my considered view is to retax the bill taking care of all the issues I have raised above and ultimately the outcome will be sorted out by Cause No. E1445 of 2020.
17. The petition E1445 of 2020 essentially carries all and sundry. The Will which is being discussed must at the end of the day detail the actual beneficiaries as well as the assets left behind by the deceased and how to deal with them. That ought to include any liability if any, including this bill if it is successful.
18. All that the court is saying in many words is that the bill will have to be taxed afresh and the outcome to await the new petition. Nothing is therefore lost to the Respondents except of course time.
19. In the premises the court orders as follows:-
 - (a) The ruling of the taxing master dated 16th May 2023 and all the consequential orders are hereby set aside.
 - (b) The bill of costs dated 20th December 2021 be retaxed afresh by another taxing master other than Hon. Lessotia Saitabau.
 - (c) The outcome of the above taxation shall await the outcome of Succession Cause No. E1445 of 2020.
 - (d) Costs in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 27TH DAY OF MARCH 2025.

H K CHEMITEI

JUDGE

