



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of David Gitau Kariuki (Deceased) (Succession Cause 783 of 2007) [2025] KEHC 5247 (KLR) (28 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5247 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 783 OF 2007**

JM NANG'EA, J

APRIL 28, 2025

BETWEEN

GRACE WANJIRU CHELENGAT APPLICANT

AND

SUSAN WANJIKU GITAU INTENDED EXPARTE APPLICANT

AND

MARY WANGUI GITAU 1ST ADMINISTRATOR

DAVID WAGATAU 2ND ADMINISTRATOR

EVANSON KAMAU 3RD ADMINISTRATOR

RULING

1. This ruling follows a Summons dated 11th October 2024 by which the Applicants pray for orders as hereunder;
 1. That pending hearing and determination of a Summons for Revocation of Grant herein dated 18th July 2024 the court does direct that at least two named beneficiaries of the estate herein provide samples for purposes of conducting DNA testing to establish whether the applicants are siblings of the said beneficiaries.
 2. That the DNA testing be done either by Path Care Kenya Limited or any other body as the Court may appoint in that behalf.
 3. That the DNA report be filed in Court within 30 days from the date of examination.
 4. That the Court is pleased to grant any other order deemed fit.
 5. That the costs of the application be in the cause.



2. One of the Applicants (Grace Wanjiru Chelangat) swore an affidavit in support of the application. She avers that she and her co-applicant are the biological children of the deceased. They lived with their parents in Gilgil until differences between their parents led to their separation. The court is told that the Applicants and their mother subsequently moved to Naivasha but their father continued to take care of their needs including their education. The Applicants lament that they have been unlawfully excluded from this Succession Cause despite being the deceased's children who were also dependent on him during his lifetime.
3. The Applicants therefore state inter alia that their exclusion from the estate of their deceased father is unlawful and unfair hence, this application.
4. The 3 Administrators of the deceased's estate filed joint affidavit evidence in reply opposing the application they inter alia contend that the application is not only malicious but is also belated and amounts to a fishing expedition. According to them, the deceased's estate was distributed according to his will and testament which does not mention the applicants among his children. The Applicants are faulted for asking for DNA profiling without specifying whose samples are to be obtained for the exercise.
5. It is further contended that the Applicants' claim is not credible given that their mother never made a similar claim and it is not shown where her body was interred.
6. The court is therefore told that the application does not meet the legal threshold for the order craved to issue.
7. The other parties/beneficiaries don't seem to have filed replies to this application.
8. Learned Counsel for the parties put in their written submissions. Making reference to the judicial determination in *M. W. & 3 Others v D. N.* [2018] eKLR, the Applicants argue that the imperatives of establishing the truth as to their paternity should prevail over the right of privacy enjoyed by those required to provide DNA samples.
9. Counsel further rely on the case of *Wilfred Karengu Gathiomi v Joyce Wambui Muturi & Another* [2016] eKLR wherein it was observed that for the burden of proof required under Sections 107, 108 and 109 of the *Evidence Act* to be discharged with regard to paternity where neither party offers proof, scientific methods like DNA profiling would be necessary. The court noted that inconvenience caused by the exercise is less important compared to finding a lasting solution of the dispute.

Administrators' Submissions

10. The Administrators reiterate the contents of their replying affidavit in their submissions. The court is told that the Applicants have not made out a prima facie case for DNA testing and that the application infringes privacy rights. Reference is made to case law in *Re Estate of Gerald Theuri Kanyugo (deceased) Succession Cause Number 685 of 2014*[2023] KEHC 19667 KLR where it was observed that "DNA testing is intrusion of an individual's privacy and bodily integrity and thus requires a firm legal and factual foundation."
11. The Court is also referred to the judicial determination in *Re Estate of MKK (deceased) (Succession Cause No. 387 of 2012* [2024] KEHC 13494 (KLR) in which the burden of proving a nexus linking the applicant and the deceased was placed on the former.
12. The Administrators accordingly urge rejection of the application for want of sufficient basis.



13. Having perused the rival affidavit evidence, the parties' submissions and the record there is contention as to whether the Applicants were children of the deceased entitled to his estate as lawful heirs. The issue for determination is whether the Applicants have satisfied the legal threshold for DNA testing as desired.
14. As held in *DNM v JK* [2016] eKLR, scientific proof of paternity should not be generalized and should not;

“lightly prevail over the right to bodily integrity and right to privacy until it is clear that such rights ought to be limited. The clarity is only established where an undoubted nexus is shown as well as a specified quest to protect or enforce specific rights. Untested and controverted affidavit evidence may not suffice.”
15. Article 31(c) of *the Constitution* grants every person;

“the right not to have information relating to their family or private affairs unnecessarily required or revealed.”
16. The Court of Appeal in *BGG & Another (Civil Application) E 584 of 2023* [2024] KECA 484 (KLR) exhorted that DNA tests in circumstances as obtain in the instant matter are conducted;

“in the process of a fact-finding mission of discovering the truth. Indeed the courts would be doing a great injustice to a party who was deserving to be entitled to the estate of the deceased if the test is not conducted. It then follows that justice is better served if the test is conducted.”
17. The Applicants have exhibited some photography in their application dated 18th July 2004 purporting to have been taken with one of the Administrators of the estate in a bid to prove their relationship with their alleged siblings. Although the Administrators state that the deceased left a will that excludes the Applicants as beneficiaries of the estate, Grant of Letters of Administration herein was applied for and issued to the Administrators on the basis of intestacy succession as pointed out by the Applicants. There was therefore no opportunity for the said Will to be proven and Probate granted.
18. As the parties are not in agreement and there being no other credible evidence proving the Applicants' alleged entitlement to the deceased's estate, it is imperative to carry out DNA profiling as desired. The application is belated but the delay does not take away the Applicants' legal rights.
19. Consequently, the Summons dated 11th October 2024 is allowed as hereunder;-
 - a. Two of the deceased's Children namely; David Wagatua Gitau and Mary Wangui Gitau are directed to present themselves, together with the Applicants before Path Care (Kenya) Limited within 14 days from the date hereof for DNA sampling and analysis to determine the Applicants' paternity.
 - b. The results of the examination shall be submitted to the court within 30 days of the testing for further directions.
 - c. The joint administrators of the estate and the Applicants shall shoulder the costs of the exercise equally.
 - d. The parties shall bear their own costs of this application.
20. Ruling accordingly.



J. M. NANG'EA - JUDGE

RULING DELIVERED VIRTUALLY THIS 28TH DAY OF APRIL, 2025 IN THE PRESENCE OF:

Mr. Onyango Advocate for the Applicants

1st Administrator, present in person

2nd Administrator, present in person

3rd Administrator, present in person

Grace Toden (Beneficiary), present

J. M. NANG'EA - JUDGE

