



REPUBLIC OF KENYA



**In re Estate of GKK (Deceased) (Succession Cause 1298 of 2011)
[2024] KEHC 2047 (KLR) (Family) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2047 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1298 OF 2011
PM NYAUNDI, J
FEBRUARY 29, 2024
IN THE MATTER OF THE ESTATE OF GKK (DECEASED)**

RULING

1. This ruling relates to Oral Application made on 28th February 2024 by Counsel for the Applicant in Application dated 20th June 2017, Catherine Aura. The Application seeks to have Advocate Joseph Kahari to be permitted to testify as he drafted the deed of gift and his testimony will be germane in settling the issues.
2. The Application is opposed by Counsels, representing the Kirima Trust, and the following beneficiaries of the Estate; the Estate of the Agnes Waruguru, Bishop Jane Gathoni Kirima, Maria Kirima, Wanjau Kirima, Estate of Fredrick Kirima, Estate of Samwel Kirima, Irene Kirima, Susan Kirima, Ruth Kirima and Wanjiru Kirima and Anne Kirima.
3. Counsel for Teresia Kirima and Alice Kirima left it to the discretion of the Court having observed that Mr. Kahari has not signed any affidavit and that his evidence may touch on matters outside the realm of the law of Succession.
4. Stephen Kirima, a beneficiary of the Estate supports the Application.
5. The Applicant asks that the Court exercises its discretion in her favour as it will be in the interests of justice to allow the Lawyer to come and testify. The Advocate is prepared to attend court on a date to be determined by the Court.
6. The parties who are opposed to the Application observe that the matter has been pending before Court for a long time and needs to be determined, allowing the Advocate to testify at this late stage will only serve to further delay the finalization of this matter.
7. In determining this Application, I have considered Articles 159 (d) alongside Articles 48 and 50 of the [Constitution](#) of Kenya.



8. Granted that the overarching objective of the Court is to deliver substantive justice and in doing so not to allow itself to be shackled by procedural technicalities this must be balanced with the right to access to justice and fair hearing which includes the right to have a trial begin and be concluded without unreasonable delay.
9. I agree with the parties that in exercising my discretion the primary consideration should be the interests of justice. In the current matter the Applicant has not presented before Court either an affidavit or witness statement to enable the Court gauge the materiality of the intended witness.
10. This speaks to a casual approach adopted by the Applicant towards this matter. Parties are focused on concluding this matter which has been pending before Court since 2011. In order for me to extend the hearing of the matter for an additional day I would need to be persuaded that the intended witness is adding value to these proceedings, I am unable to do so in the absence of a clear indication as to the reason that the Applicant requests to have this witness and the only way I would be able to gauge this is by having sight of an affidavit signed by the Advocate or a witness statement.
11. In the circumstances I find that the interests of justice tilt towards moving towards the conclusion of this matter without further delay, I therefore disallow the Application.

DATED, DELIVERED AND SIGNED AT NAIROBI THIS 29th DAY OF February, 2024.

PATRICIA NYAUNDI

JUDGE

