



In re Estate of Leonard Macharia Ikuu (Deceased) (Succession Cause 146 of 2002) [2024] KEHC 4127 (KLR) (25 April 2024) (Ruling)

Neutral citation: [2024] KEHC 4127 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 146 OF 2002
HI ONG'UDI, J
APRIL 25, 2024**

IN THE MATTER OF THE ESTATE OF LEONARD MACHARIA IKUA (DECEASED)

BETWEEN

NICHOLAS GITAU KAMAU APPLICANT

AND

PATRICK NGEI MACHARIA 1ST RESPONDENT

JACKSON MACHARIA NJENGA 2ND RESPONDENT

RULING

1. In the Notice of Motion dated 21st September 2023 the applicant herein prays for orders that he be joined and/or added to this suit as an interested party.
2. The application is based on the grounds on its face and his affidavit of even date. He deposed that both their parents Kamau Macharia and Teresia Waithera Kamau are deceased. Further, that his father Kamau Macharia was the co-administrator of the estate of the deceased herein alongside Nelly Wanjiru Macharia who is now deceased. He added that upon their father's death, letters of administration of his estate were granted to their mother Teresia Waithera Kamau (deceased).
3. He deposed further that upon the death of their mother, they commenced proceedings with a view of substituting her as an administrator which proceeding are still sub judice. Further, that the estate of their father was represented by him and his siblings as survivors. He added that none of them had been included in the succession cause relating to the estate of the deceased herein placing them at a risk of being disinherited.
4. The respondent through his replying affidavit sworn on 6th December 2023, averred that Kamau Macharia was his brother and he died on 16th October 2005. Further, that he was survived by his wives Teresia Waithera Kamau and Jane Mbeere who were appointed as the administrators of his estate on



28th September 2007 in Nakuru HCC Succ 213 of 2006. He added that Jane Mbeere is currently the sole administrator of the estate of his late brother.

5. He averred further that the applicant had not established that he had a stake in the estate of the deceased herein. Further, that the said Jane Mbeere had been a part of the succession cause and as such the interest of his late brother Kamau Ikua had been catered for. He added that the applicant was not a direct beneficiary of the estate of the deceased herein and as such he could not be included as an interested party. He went on to aver that the present application was meant to delay the hearing and determination of the succession matter which has been pending for over 20 years. He urged the court to dismiss the said application with costs,
6. The applicant responded to the relying affidavit by filing a further affidavit sworn on 7th March 2024. He deposed that indeed Jane Mbeere was his step-mother and currently the sole administrator to the estate of their late father following the death of their mother. Further, that they had never had any close association with their step-mother and they believed that she could not sufficiently take care of their interest in this cause.

Analysis and Determination

7. I have considered the application and the affidavits by the parties. In my opinion the issue arising for determination is whether the applicant has satisfied the ground for enjoinder as an interested party.
8. The term interested party is not defined in the *Law of Succession Act*. On the other hand, in the *Black's Law Dictionary* at paragraph 1232, 9th Edition an "Interested Party" is defined as:

"A party who has a recognizable stake (and therefore standing) in a matter."
9. *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 under Rule 2 (hereafter the "Mutunga Rules") defines an interested party as thus:

"an interested party is a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the Court, but is not a party to the proceedings or may not be directly involved in the litigation."
10. *In re Estate of Kungu Waigi (deceased) [2020]* eKLR, the court cited the Supreme Court case in *Trusted Society of Human Rights Alliance v. Mumo Matemu & 5 Others, Supreme Court Petition No. 12 of 2013, [2014]* eKLR where the court held as follows;

"(18) Consequently, an interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause..."
11. The said court also cited the High Court case in *Judicial Service Commission v. Speaker of The National Assembly & 8 Others, [2014]* eKLR, where the court held as follows;

".....the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party:



One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

- i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
- ii. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
- iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.” (emphasis added)

12. In the instant case the applicant seeks to be enjoined as an interested party. He claims to be a grandson of the deceased herein and that his father was a son and administrator of the estate of the deceased. He argued that both administrators to the estate were deceased and therefore their interests would not be represented in the instant suit. He added that their mother who was an administrator in their father’s estate is deceased and the remaining administrator was their stepmother.

13. The respondent on his part argued that the applicant had not established that he had a stake in the estate of the deceased. Further, that the said Jane Mbeere had been a part of the succession cause and as such the interest of his late brother Kamau Ikuu had been catered for. He added that the applicant was not a direct beneficiary of the estate of the deceased herein and as such he cannot be included as an interested party.

14. It is not in dispute that the applicant herein is a grandson to the deceased. Further, it is not in dispute that the applicant’s step mother one Jane Mbeere was the remaining administrator in his father’s estate. Another thing to note is that the applicant in his affidavit in support of application deposed that they had commenced proceedings to substitute their mother who was a co-administrator in their father’s estate.

15. In the case of *Cleopa Amutala Namayi v Judith Were Succession Cause 457 of 2005 [2015]* eKLR, Mrima J observed thus:

“Be that as it may, under Part V of the Act grandchildren have no automatic right to inherit their grandparents The argument behind this position is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents indirectly through their own parents.... The children to the grandparents inherit first and thereafter the grandchildren inherit from their parents. The only time where the grandchildren can inherit directly from their grandparents is when the grandchildren’s own parents are dead...”

16. In applying all the principles in the *Law of Succession Act* and case law cited above, it is evident that the applicant herein (the proposed interested party) has not demonstrated the exact interest or stake he has in the cause in his grandfather’s estate. These are mere statements that the estate had no administrator and that they risked being disinherited. It is clear that their step mother being the sole administrator



of their own father's estate should represent the interests of the late Macharia Kamau's family in the current succession cause.

17. Additionally, if indeed there is a pending application for substitution in their father's estate as claimed then the same should be pursued before rushing here to file applications such as this one which I find to be premature.
18. The upshot is that is application dated 21st September 2023 lack merit and is dismissed with costs.
19. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 25TH DAY OF APRIL, 2024 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

