



In re Estate of Francis Kamau Kinuthia (Deceased) (Succession Cause 672 of 2018) [2024] KEHC 7609 (KLR) (27 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7609 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

SUCCESSION CAUSE 672 OF 2018

HK CHEMITEI, J

JUNE 27, 2024

RULING

1. This ruling relates to the applications dated 7th June, 2022 11th November, 2022 and 20th December, 2022.
2. The summons/ application dated 7th June, 2022 filed by Vicky Wanjiru Nyoro seeks for ORDERS THAT:
 - a) Spent.
 - b) The honorable court do annul or amend the grant to include Vicky Wanjiru Nyoro as an administrator.
 - c) The succession cause be transferred for hearing and determination in the High Court at Nakuru.
 - d) Costs be provided for.
3. The application is supported by supporting affidavit sworn by Vicky Wanjiru Nyoro on 7th June, 2022 stating inter alia that she is one of the protestors in this case by virtue of being a daughter in law of the deceased Francis Kamau Kinuthia having been married by his son the late Livingstone Kariuki Kamau.
4. That she lives in Nakuru on Plot No. Nakuru Municipality Block 7/ 294 owned by the deceased Francis Kamau Kinuthia with one of the administrators Robinson Kinuthia Kamau. The other beneficiary, Miriam Njoki Ruiru is a daughter in law of the deceased Francis Kamau Kinuthia having been married by one Geoffrey Kiambuthi who is deceased. Since the deceased's death, the administrators have kept them in the dark about the running of the estate, the collection of rents from rental premises in the estate as well as division of funds from the rented premises on LR No. 4885/56 9IR 90182) to Regnol Oil (K) Limited.
5. She went on that efforts to get the administrators issue them with copies of the lease agreement between Regnol Oil (K) Limited and the administrators have not been forthcoming and they are completely in the dark with Miriam Njoki Ruiru. They have ben inquiring on the Kshs. 20,200,000/= the estate



was to receive from the National Land Commission in compensation for the acquisition by the Kenya Government of part of the land LR No. 4885/56 in the project A104 James Gichuru Junction–Rironi Junction (A104/B3).

6. That she and Miriam Njoki Ruiru have been sidelined from the affairs of the estate including the property earlier on occupied and ran by one of the beneficiaries Margaret Wangari Kamau who passed away. She should thus be included in the grant as an administrator to ensure hers and Miriam Njoki Ruiru's interests are taken care of.
7. She deponed that the administrators Robinson Kamau and Damaris Njeri Kinuthia have refused to cooperate and give an account of the rental properties of the estate. The administrators have also sold Nakuru Municipality Block 7/468 to one Yunis Malik and they have refused to avail the sale agreement to Miriam Njoki Ruiru and her. She prays that the matter be transferred to Nakuru because 3 of the beneficiaries reside in Nakuru and only Damaris Njeri Kinuthia resides in Nairobi.
8. The application is opposed by replying affidavit sworn by Damaris Njeri Kinuthia on 21st February, 2023 who avers that she is an administrator of the deceased's estate together with her brother Robinson Kinuthia Kamau who has given consent for her to swear the affidavit on his behalf. That they met as a family and agreed on the issues raised and indeed signed an agreement on 25th November, 2017 as had been proposed by their now deceased mother.
9. The annexures referred to in Vicky Wanjiru Nyoro's supporting affidavit is the petition and not the application for partial consent. Vicky Wanjiru Nyoro who is their sister in law mentions certain properties which she alleges were omitted from the list of the deceased's assets whilst she is well aware that those properties and or documents were not traced and they would be grateful if she provided evidence of the same and in particular, the machinery mentioned, Dagoretti Kinoo/382/42, Plot No. 35A Chepkongony Road, Kilifi Kikambala, Dandora, Majimazuri/670 and Kwale Shimoni 415.
10. The Londiani properties she averred were already identified and the proposal was to be shared equally among all beneficiaries. The inventory of the deceased's assets was provided by their mother in the presence of all the children and the applicant as well as their other sister in law, Miriam Njoki Ruiru.
11. As regards the distribution of Ngong/Ngong/1042 the same was done by the deceased during his lifetime and each of them was equally gifted 2 acres and therefore the averments by Vicky Wanjiru Nyoro are not true. The estate is under no legal obligation to fund the education of grand children and the same should be catered for by their respective parents
12. Vicky Wanjiru Nyoro has not capacity to demand being added as an administrator but she and their other sister in law, Miriam Njoki Ruiru have been kept abreast of all activities of the estate. Any accounts of the estate's funds will be best handled at the confirmation of grant and which application they have filed.
13. She went on to accuse Vicky Wanjiru Nyoro of not disclosing the payments she has received from the leased petrol station and the two widows and their deceased brothers (Vicky Wanjiru Nyoro included) receive Kshs. 85, 000/= every quarter. She said that as administrators, they are responsible for payment of land rates, rent, water bills and general maintenance of the estate.
14. She prays that the application dated 6th June, 2022 be dismissed.
15. The application dated 11th November, 2020 filed by Vicky Wanjiru Nyoro seeks for ORDERS THAT:
 - (a) Spent.



- (b) The honourable court do order a full and accurate inventory of the deceased's assets and liabilities to render accurate accounts of all the dealings therewith up to date.
 - (c) The administrators distribute the whole estate of the deceased and not partially as applied for regarding the compensation by National Land Commission for the acquisition of parcel number 4885/56.
 - (d) There be an order that the NLC withholds payment for the compulsory acquisition of parcel 4885/56 until the case is heard and determined.
 - (e) The administrators give a full account of the running of Sorget saw mills, tractors and machinery therein, rents collected from parcel Nos. Nakuru Block 7/458 & 459, Petrol Station on parcel Limuru 4885/56 and Plot No. 2 Londiani township with rental houses.
16. The application is supported by affidavit sworn by Vicky Wanjiru Nyoro on 11th November, 2020 and further affidavit sworn on 22nd May, 2023 where she states inter alia that she is the deceased's daughter in law having been married to his deceased son, Livingstone Kariuki Kamau with whom they had 3 children. Letters of administration were issued to Robinson Kinuthia Kamau and Damaris Njeri Kinuthia.
 17. She claimed that to date, the estate has not been distributed. They have been served with some documents for partial distribution of the deceased's estate namely compensation by the National Land Commission of 0. 1252 HA from LR. No. 4885/ 56 in Limuru.
 18. The list of assets enumerated is incomplete as it has left out Sorget Saw Mill machinery, power saws, Stenner handsaw, Miyagawa Planer Moulder, Robinson Roller bench, Crosscut, 6 tractors amongst them KAK 575N, SAME LASER 854WD REG NO. KAK 590D, 2 SAME 100 4WD TRACTORS, 2 SAME 4WD MINI TAURUS TRACTORS, DAGORETTI/ KINOO 384/42, LONDIANI PLOT 584/XI/111/1, PLOT NO. 35 A CHEPKONGONY ROAD, PLOT 584/ 419 LONDIANI, PLOT KILIFI/KIKAMBALA 285/28, PLOT NO. IR DANDORA/209/11285, PLOT NO. 26 ON ATTACHED PLAN 78853/111/ 5A NAIROBI SOUTH B, PLOT AT MAJIMAZURI BLOCK 1/IGURE/670, PLOT KWALE/ SHIMONI/415, KILIFI/KIKAMBALA/285/35, KILIFI/ KIKAMBALA/285/43, PARCEL ARIMI NDOSHWWA 21 & 86 and PARCEL NO. 4885/56 LIMURU. Shares in Barclays Bank, Standard Chartered Bank, Co-operative Bank, Equity Bank, KCB Bank, Safaricom Limited, Tourism Promotion Services (K) Limited, Scan Group Limited and Centum Limited have also been left out.
 19. That there has been disposal of the deceased's properties namely parcel Ngong/1042 and the sharing of the same before distribution was grossly unfair as the administrators have taken the lion's share of 9 acres each and leaving her with 2 acres only. The intended application for partial distribution is unfair as some expenses have been very discreet in the way they have been running the affairs of the deceased hardly including her unless such a time when they need money.
 20. She went on to depose that the deceased took care of his grand children and had been paying the children's school fees and had promised to do so until they finished their education.
 21. She thus prays that the application dated 11th November, 2020 be allowed as it raises genuine concerns of the beneficiaries who have been sidelined by the administrators.
 22. The objection and application dated 20th December, 2022 by Patrick Njuguna Kimani seeks that a DNA test be allowed to compare his samples with those of the deceased' and for the acknowledged



- sons and daughters of the deceased as well as him be subjected to sibling DNA testing for purposes of determining paternity or claim that the deceased is their biological father.
23. The application is supported by affidavit sworn by Patrick Njuguna Kimani on 20th December, 2012. He states inter alia that he is the deceased's biological son and therefore a beneficiary of his estate. He was never consulted when this cause was filed in court nor informed of the entire process. The petitioners left him out as a beneficiary of the deceased's estate with a view to disinheriting him. His late mother was a 2nd wife to the deceased but they later parted ways.
 24. The deceased kept seeing him and during his lifetime, he cared and provided fatherly advise to him as a son. His efforts to file a joint succession suit with the respondents were unsuccessful. There is no known harvested sample of the deceased's DNA that has been deposited in any data bank facility that he can get the deceased's samples compared to. Exhumation of the deceased's remains is the only option left as it is expected there will be a challenge in respect to the privacy of rights of the respondent.
 25. He went on that it is necessary for the DNA test to be ordered in order to conclusively determine his paternity for purposes of succession in respect of the deceased's estate. A determination in paternity will pave way for expeditious disposal of this matter, be it referral to court annexed mediation or parties agreed mode of distribution over the estate.
 26. The application is opposed vide replying affidavit sworn by Damaris Njeri Kinuthia. She states inter alia that they did not consult Patrick Njuguna Kimani before filing this cause because he and his mother are strangers to them. The petition was duly gazetted and the grant of letters of administration issued. Their father died on 1st June, 2017 and it would be grossly unjust to exhume the remains of their father 6 years since they buried him as this would be traumatizing to them and all his children.
 27. It was strange she said that Patrick Njuguna Kimani did not bring forth his claim during their mother's lifetime nor did he make attempts to come home during the funeral arrangements yet he acknowledged that he knew of the death of their father. They stand to suffer great prejudice and mental anguish and it would not be just to subject them to the tests claimed or exhumation of the deceased's remains, if any.
 28. Damaris Njeri Kinuthia and Robinson Kinuthia Kamau have filed written submissions on all the applications. The submissions are dated 25th July, 2023.
 29. Victoria Wanjiru Nyoro has filed submissions on all the applications. The submissions are dated 25th July, 2023.

Analysis and Determination

30. I have carefully considered the application, the responses as well as the written submissions filed by the parties. The issues for determination are:
 - a. Whether or not Patrick Njuguna Kimani is the deceased's biological son hence a beneficiary to his estate?
 - b. Whether the deceased's estate should be partially or fully confirmed for distribution.
 - c. Whether the properties listed by Vicky Wanjiru Nyoro as having been omitted should be included in the list of the assets that form part of the deceased's estate.
 - d. Whether the administrators should provide a full and accurate inventory of how they have administered the deceased's estate from the time of his death to date.



31. *In re Estate of JMK (deceased)* [2021] eKLR the court stated as follows:

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“34. In this regard, it is a natural wish of a person, regardless of religion, that his or her body be not just properly buried after death or whatever cultural practice is applicable, but should remain undisturbed thereafter. I am therefore of the view that there is no need to disturb the deceased while there are other available options to the applicant. Indeed, exhumation is a drastic measure that may be prejudicial to the family and community at large, since it is considered a cultural affront. The Court should therefore exercise caution before issuing such orders. However, when certain circumstances arise and make it desirable and imperative that a body be disinterred, the court will not unnecessarily fetter its discretion but will order such disinterment to meet the ends of justice.

35. It is also the duty of the Court to render justice without fear or favour. In so doing, the facts are supposed to be the guiding principles in order to arrive at fairness. Litigation is about seeking the truth, fairness and justice. One of the principles found in Article 159 of *the Constitution* is that in seeking justice, there should be no fetter by reason of technicalities and that justice should be dispensed expeditiously.

36. Consequently, the Court will leave the three alternative routes of DNA testing available to the applicant. Afterall, the applicant/objector had all the time to test the children for DNA while the deceased was alive but she did not.

37. I therefore find that the most effective and justifiable way to resolve the issue is to order as I hereby do that:

1. The applicant elects to adopt any of the following methods:

i. That a sibling Deoxyribonucleic Acid (DNA) test be undertaken with a view of ascertaining the paternity of the children of SWN, EN and LWG, using samples from any known siblings of the deceased within 21 days;

Or

ii. Any two known children of the deceased do avail themselves at the Government Chemist together with the children of the objectors to give samples for the sibling DNA test within 21 days from the date of this order. [Emphasis mine]

Or

iii. The DNA tests be undertaken using the samples taken by Dr. Andrew Kanyi Gachii.”

32. In light of the foregoing cited authority, the objector, Patrick Njuguna Kimani has a valid claim in my view. It needs to be ascertained whether or not he is a biological son to the deceased.

33. I do not find any prejudice which the other beneficiaries herein stand to suffer if such a scientific action is undertaken.



34. He has prayed that the deceased be exhumed and samples be taken for the above exercise. Based on the cited authority and barring any scientific barrier i think that the available relatives are in a position to provide the necessary samples as shall be demanded by the medical personnel.
35. Once the results are known then it shall be easy for the estate to know how to treat him in terms of eventual distribution. As regards Vicky Wanjiru Nyoro she of course raises valid claims in her objection. By virtue of her and Miriam Njoki Ruiru being the deceased's daughters in law, they have a claim on the deceased's estate through the shares owed to their deceased husbands.
36. In her prayers she has argued that the administrators have left out substantial part of the estate and she has enumerated the properties left out. I think it is only fair that if it is true, although disputed by the respondents there is no harm in having the same brought forth for purposes of proper accountability and distribution.
37. The best way in my considered view is to have the grant dated 30th April 2018 fully confirmed. This will iron out any issue and more so the properties allegedly left out by the respondents if it is true. The applicants will also demonstrate the properties which they think the respondents have not revealed.
38. The issue that the deceased took care of Vicky's children by paying their school fees prior to his death, and further that it was also her mother in law's wish that the deceased's estate continues to pay school fees for her children after his death has not been backed up by any tangible evidence. They will only benefit once the estate is distributed on account of their father being the deceased s son.
39. At this juncture I do not find any reason to add the applicants as administrators for the reasons stated above. In other words, since the estate is long overdue for distribution there is no point of adding another administrator.
40. I think I have said much to indicate that even the issue regarding the Ngong property can still be handled at the level of distribution of the estate. In essence all the parties will be able to explain how the land was sold and the proceeds shared out.
41. The same position goes to the compensation in respect to Regnol Oils by the state agency, National Land Commission. The sum mentioned therein will be held in abeyance till the parties agree or the grant is confirmed. This will give an equal playing field to all the parties.
42. There was the issue of this file being transferred to Nakuru high court for determination. Looking at the situation of the assets it is prima facie evident that almost except some few are within Nakuru county. I suppose as suggested by the applicants a good number of family members or beneficiaries live outside the Nairobi county.
43. Administratively and geographically i find this argument plausible. This matter ought thus to be transferred to Nakuru high court for determination.
44. **Consequently, and in totality it is directed that:-**
 - (a) The applicant /objector Patrick Njuguna Kimani be subjected to a DNA analysis to confirm whether he is the deceased son.
 - (b) The above exercise shall be undertaken within 60 days from the date herein and the matter shall be mentioned before the Deputy Registrar immediately where all the parties shall appear for purposes of agreeing on modalities.
 - (c) In the event of any dispute the Deputy Registrar shall be at liberty to seek further directions from this court.



- (d) The applicant Patrick Njuguna Kimani shall meet the costs of the said DNA exercise refundable by the estate should the results be declared positive.
- (e) The amount of kshs 20,200,000 being compensation to the estate by the National Land Commission shall await the outcome of the confirmation of grant or until the parties agree on the way forward in terms of distribution.
- (f) The administrators should apply for the confirmation of grant within 90 days from the date herein.
- (g) This matter is hereby transferred to Nakuru High Court for final determination.
- (h) Being a family matter each party shall meet their respective costs.

Dated signed and delivered at Nairobi via video link this 27th day of June 2024.

H K CHEMITEI

JUDGE

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