



**In re Estate of Duncan Kireri Wachira (Deceased) (Succession Cause
105 of 2020) [2023] KEHC 24360 (KLR) (Family) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 24360 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 105 OF 2020
EKO OGOLA, J
SEPTEMBER 28, 2023**

BETWEEN

BENJAMIN NJOGU KIRERI 1ST PETITIONER

MARGARET WAKONYO KIRERI 2ND PETITIONER

AND

EDWARD THIONGO WACHIRA 1ST OBJECTOR

MICHAEL WANJOHI WACHIRA 2ND OBJECTOR

SYLVIA MUTHONI WACHIRA 3RD OBJECTOR

HANNAH WANJIKU WACHIRA 4TH OBJECTOR

RULING

1. What is before the court is an application dated May 16, 2022. The applicant prays for the following Orders:-
 - a. That this honourable court be and is hereby pleased to strike out the names of the 1st & 2nd petitioners as parties to this cause.
 - b. This honourable court be and is hereby pleased to strike out the Petition for Letters of Administration Intestate dated March 17, 2020.
 - c. That this honourable court be and is hereby pleased to amend the proceedings herein to show that on December 23, 2020 the 1st, 2nd & 3rd objectors applied orally for leave to appeal, which applications were granted forthwith by Hon. Lady Justice A.A. Aroni;



- d. That the costs of this Application be provided for.
2. To put matters into context, the deceased died intestate on October 22, 2019. The deceased got married to the 4th objector on October 7, 1967. They sired three children. That is the Applicant and the 2nd and 3rd objector. When the 4th objector relocated to the United States of America, the deceased started a relationship with the 1st Petitioner and they wedded on June 20, 2015.
 3. The deceased sought a divorce from the 4th objector sometime in 2014. In the year 2017, the 4th objector contested the said divorce proceedings. It is unclear from the evidence on record whether the divorce proceedings and the Petition contesting the divorce were heard and determined. Further to this, there is evidence on record that on January 9, 2018, the Deputy Registrar of Marriage declared the marriage between the deceased and the 1st petitioner as invalid.
 4. On June 17, 2020, the petitioners petitioned for letters of administration intestate for the estate of the deceased in their capacity as widow and son of the deceased. The objectors on July 1, 2020, filed their Objection to making a grant to the petitioners. Their grounds for the objection were inter alia that the petitioners were imposters who were not related to the deceased in any way; that the properties listed as part of the deceased estate are actually matrimonial properties; and that their advocate on record Messr. Gathara Mahinda & Co. Advocates lack the legal capacity to act in the proceedings as there is a conflict of interest. The Petition for grant of letters of administration and the Objection are yet to be heard and determined.
 5. Back to the instant Application. The Application is based on the grounds set forth therein and the supporting affidavit and supplementary affidavit sworn by the applicant.
 6. The applicant alleged that the 1st & 2nd petitioner and their advocate Mr. Geoffrey Gathara Mahinda from the firm of Messr. Gathara Mahinda & Co. Advocates are con artists/impostors who are working together to illegally deprive the objectors of the subject-matter estate by falsely claiming to be the deceased's widow, son and advocate/creditor respectively. Also, the Petition for Letters of Administration Intestate dated March 17, 2020 is frivolous and an abuse of the process of the court as the petitioners are improperly joined to this cause, whereas they are incapable of proving that they possess any overriding interest in the estate of the deceased, which estate was the matrimonial property of the deceased and the 4th objector hence, this court lacks jurisdiction to hear and determine the said Petition.
 7. The applicant further deposed that there is a defect and/or error in the typed proceedings which failed to capture that on December 23, 2020 the 1st, 2nd & 3rd objectors made an oral application for leave to appeal the Ruling of the court dated December 23, 2020. According to the applicant, leave was granted by the court.
 8. In opposition, the petitioners responded vide Grounds of Opposition dated June 20, 2022 and replying affidavit sworn by the 1st petitioner dated October 31, 2022. The 1st petitioner deposed that the issues raised in the Applications are the same issues raised in the Objection to making of a grant. She added that the Petition is yet to be determined. According to the 1st petitioner, she is the widow of the deceased and the 2nd petitioner is the son of the deceased and therefore entitled to participate in the succession cause.
 9. Parties were directed to canvass the application by way of written submissions. Counsels have filed their submissions which have been read and considered.



Determination

10. I have considered the Application as filed, the rival affidavits, the written submissions of counsel, and the entire record of the court. The issue for determination is whether the orders sought can be granted.
11. The applicant has prayed for the petitioners and their petition to be struck off on the grounds that the petitioners were not widow and son of the deceased as averred in their Petition. It must be pointed out that in the Ruling of the court dated December 23, 2020, the court stated in paragraph 11 that: "...the court must first determine the relationship between the applicants and the deceased which may require more evidence being placed before the court. Secondly, in the circumstances of the case, there is a need to preserve the estate until the court determines who the rightful heirs are." The question of whether of not the petitioners are the widow and son of the deceased is a question that requires further evidence and examination that can only take place during the hearing of the said Petition. Further, from the record, it is also unclear whether the 4th objector was a wife or former wife of the deceased. Therefore, there is a need for further interrogation on who are the actual heirs of the estate of the deceased or who were the actual dependents of the deceased during his lifetime.
12. In my view, this application is premature as the Petition and the Objection were properly filed and it is for the parties to be zealous and seek the court's direction on hearing of the Petition and Objection. From the foregoing, I hereby dismiss prayer (a) and (b) of the application.
13. The applicant avers that there is an error in the typed proceedings that needs to be rectified. From the record of the court, on December 23, 2020, the court delivered its Ruling, the applicant and the 2nd objector who appeared in person made an oral application for leave to appeal. There is nothing on the court record that shows that the court granted the leave as prayed. The typed proceedings are an exact replica of the written proceedings. Therefore, there is no error to correct. I hereby dismiss prayer (c) of the application.
14. The upshot is that the Application dated May 16, 2022 is dismissed for lack of merit. Costs for the Application be borne by the applicant.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF SEPTEMBER 2023

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E.K. OGOLA

JUDGE

