



**Njeri v Ndiga (Originating Summons E085 of 2022)
[2025] KEHC 7082 (KLR) (Civ) (23 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7082 (KLR)

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

CIVIL

ORIGINATING SUMMONS E085 OF 2022

PM NYAUNDI, J

MAY 23, 2025

IN THE MATTER OF THE LATE ZACHARIAH KARIUKI

NDIGA

AND

IN THE MATTER OF THE LAW OF SUCCESSION ACT

AND

IN THE MATTER OF THE WILL OF THE LATE ZACHARIAH

KARIUKI NDIGA

BETWEEN

MARGARET REBECCA NJERI APPLICANT

AND

PAUL MURIITHI NDIGA RESPONDENT

JUDGMENT

1. *Vide* Originating summons dated 21st November 2022, the Applicant herein seeks that the Will dated 10th February 2024 allegedly made by the deceased, Zachariah Kariuki Ndiga be voided on the following grounds-
 - a. That it falsely refers to Paul Muriithi Ndiga as a son to the deceased and he is not, neither is he an adopted son.
 - b. The deceased is said to have bequeathed property that is not his (Saika Settlement Scheme Plot 2X9)



- c. It fails to provide for the widow of the deceased and provides for his brother Paul Muriithi
2. She therefore prays that she be allowed to administer the estate of the deceased to the exclusion of the respondent Paul Muriithi Ndiga.
 3. The matter proceeded by way of *viva voce* evidence. The applicant testified along with 3 witnesses and the respondent testified as the sole witness. The parties both filed written submissions in which they restated their evidence.
 4. The central issue is the validity of the will. That is, whether the will as drafted complied with the mandatory provisions of Section 11 of the *Law of Succession Act*.
 5. Section 11 provides-
Written wills
No written will shall be valid unless—
 - (a) the testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction of the testator;
 - (b) the signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will;
 - (c) the will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgement of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.
 6. I will reproduce the attestation section of the will-
This will is made by me Zachariah Kariuki Ndiga ID NO 7919360 Signed
1ST Witness Stephen Odihambo ID NO 5857680....Signed
2ND Witness Reuben Njoroge ID NO.2456815 ..Signed
In Presence Of D.k. Wanyoike Advocate And Commissioner For Oaths.
 7. On scrutiny of the will, it does not reveal that the testator affixed his signature in the presence of the witnesses. It is also not evident that the witnesses signed the will in the presence of the testator. The respondent elected not to call the surviving witness and the Advocate in whose presence the will is said to have been executed. As the will has not been associated with the deceased. Yet this is a mandatory requirement and non compliance has the effect of voiding the will. The respondent did not testify that he was present at the execution of the will. In his words he was surprised that the deceased had provided for him.
 8. The validity of the will is not established as it is not possible to confirm that the will was properly attested to as required by law. It is not therefore possible that the estate of the deceased will be administered in accordance with the will as suggested by the respondent.
 9. The respondent requests that he jointly petition for the grant of letters of administration with the applicant. However, Section 66 of the *Law of Succession Act* sets out the preference to be given to certain



persons to administer where the deceased has died intestate. Section 66 (a) gives first priority to the spouse or spouses with or without association of other beneficiaries.

10. It is not in dispute that the applicant is the widow of the deceased. I direct therefore that the applicant Petition for grant of letters of administration intestate in the estate of the deceased within 60 days.
11. The matter will be mentioned before the Deputy Registrar on the 8th of August 2025 to confirm compliance and that the matter is ready for gazettelement and to take further directions. The respondent will be at liberty to make an application under Section 26 of the Law of Succession Act at the opportune moment.
12. Each party will bear their own costs.

It is so ordered

SIGNED, DATED AND. DELIVERED VIRTUALLY IN NAIROBI ON 23rd DAY OF MAY, 2025.

P M NYAUNDI

HIGH COURT JUDGE

In the presence:

Fardosa Court Assistant

No appearance by Parties

