



REPUBLIC OF KENYA



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**In re Estate of Joseck Thuo Ngeta (Deceased) (Succession Cause  
E076 of 2022) [2025] KEHC 10634 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10634 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE E076 OF 2022**

**JM NANG'EA, J**

**JULY 17, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE JOSECK THUO NGETA (DECEASED)**

**BETWEEN**

**SUSAN WANJIRU THUO ..... 1<sup>ST</sup> APPLICANT  
NIXON KARIUKI THUO ..... 2<sup>ND</sup> APPLICANT  
MAURINE JUDY MUKAMI THUO ..... 3<sup>RD</sup> APPLICANT  
ACTING THROUGH HER MOTHER & GUARDIAN – SUSAN WANJIRU  
THUO**

**AND**

**WAIHARO HARRISON NGETA ..... 1<sup>ST</sup> RESPONDENT  
NAHASHON MAHUGU KABIRI ..... 2<sup>ND</sup> RESPONDENT  
JAMES NGETA THUO ..... 3<sup>RD</sup> RESPONDENT  
GEOFFREY NGETA THUO ..... 4<sup>TH</sup> RESPONDENT  
ERICK KIMONDO THUO ..... 5<sup>TH</sup> RESPONDENT**

**AND**

**MARION WANJUHI WANGUI ..... APPLICANT**

**AND**

**WAIHARO HARRISON NGETA ..... RESPONDENT  
NAHASHON MAHUGU KABIRI ..... RESPONDENT**



## RULING

### On Summonses Dated 3rd October 2022 and 1<sup>st</sup> August 2024

1. For determination before this Court is the Objectors' Summons dated 3<sup>rd</sup> October, 2022 disputing a purported Will of the deceased herein and a further application by Summons dated 1<sup>st</sup> August 2024 by one Marion Wanjohi Wangui. It was directed that both applications be disposed of together. I shall begin with the application dated 3<sup>rd</sup> October 2022.
2. The Applicants in the application dated 3<sup>rd</sup> October 2022 pray for orders as hereunder:-
  1. Spent
  2. That pending the hearing and determination of this application and of this suit/cause, all the Respondents herein jointly and severally, by themselves, their agents, representatives or assignees, be restrained by order of injunction from selling, alienating, leasing-out such properties as were not leased-out during the deceased's lifetime (being Abbey Resort on Title No. Nakuru Municipality Block 2/209, and the tea plantation on L.R. Loc. 19 Gacharageini/2490, Loc. Gacharageini/2491, and Loc. 19 Gacharageini/2492, in Murang'a), and from collecting or receiving rent from, or in any other manner transferring or wasting, and of the Deceased's Assets listed in the undated Petition for Probate of Written Will filed herein on 02/08/2022.
  3. That pending the hearing and determination of this Application and of this suit/Cause, such reasonable and adequate provision be made for the maintenance and upkeep of Susan Wanjiru Thuo and Maurine Judy Mukami Thuo, being widow and daughter of the Deceased, and having been wholly dependent on the Deceased.
  4. That the said provision for Susan Wanjiru Thuo and Maurine Judy Mukami Thuo be determined to be in the monthly sums of Ksh. 320,000. 00 and Ksh. 210,000. 00 respectively (or such other sums as the court may order), and that the said provision/money be drawn from the Estate Bank Account No. 5263xxxxxx at NCBA Bank, Nakuru Branch, which Account is in the names of James Ngeta Thuo, Geoffrey Njeta Thuo, Erick Kimondo Thuo and Nixon Kariuki Thuo, OR that the said provision/money be drawn from any other of the Deceased's Bank Accounts listed in the aforesaid un-dated Petition filed on 2<sup>nd</sup> August 2022, as the court may order.
  5. That all the rental income from the Deceased's Estate properties as listed in the said un-dated Petition filed on 02/08/2022, be collected by an Estate Agent(s) to be appointed or approved by the Court, and all the said rental income be deposited into the aforesaid Estate Bank Account No. 5263xxxxxx at NCBA Bank Nakuru Branch.
  6. That the 4<sup>th</sup> Respondent Geoffrey Ngeta Thuo do produce and surrender to court for safe custody all the Deceased's property ownership documents, including all Land Title Documents, Motor Vehicle Log Books and Share Certificates for all the Estate Assets/properties listed in the said un-dated Petition filed on 02/08/2022.
  7. That all the income from the aforesaid Abbey Resort (hotel) business in Nakuru town, and all the income from the aforesaid tea farming venture in Murang'a, to forthwith and henceforth



be deposited into the aforesaid Estate Bank Account No. 5263xxxxxx at NCBA Bank, Nakuru Branch.

8. That the 4<sup>th</sup> Respondent Geoffrey Ngeta Thuo do forthwith produce and file in court and furnish the Objectors/Applicants herein with the full Financial Accounts for the aforesaid Abbey Resort (hotel) business in Nakuru town, from the date of the Deceased's death to date.
  9. That the Applicants herein Susan Wanjiru Thuo and/or Nixon Kariuki Thuo, either by themselves or jointly with the 4<sup>th</sup> Respondent Geoffrey Ngeta Thuo, do henceforth manage and run the aforesaid Abbey Resort (hotel) business in Nakuru town.
  10. That the 3<sup>rd</sup> Respondent James Ngeta Thuo do forthwith produce and file in court and furnish the Objectors/Applicants herein with the Financial Accounts of the aforesaid tea farming venture in Murang'a.
  11. That the Applicants Susan Wanjiru Thuo and/or Nixon Kariuki Thuo, either by themselves or jointly with the 3<sup>rd</sup> Respondent James Ngeta Thuo, do manage and run the aforesaid tea plantation venture in Murang'a.
  12. That the Financial Institutions listed hereunder do avail and furnish the Court and the Objectors/Applicants herein with the full and current Financial Statements of all the Accounts held by them in the name of the late Joseph Thuo Ngeta (Deceased).
    - a. Equity Bank Account No. 012020xxxxxx
    - b. Bank of Africa Account No. 0821xxxxxx
    - c. Barclays Bank Account No. 075 – xxxxxxx
    - d. Unaitas Bank Account No. 1011xxxxxx
    - e. NCBA Bank Account No. 7664xxxxxx
    - f. N.S.S.F Account No. 0762xxxxxx
    - g. CIC Unit Trust Account No. 0120200xxxxxx
  13. That costs of this Application be provided for.
  14. Any other or further relief or directions as the court may deem fit to grant.
3. The Application is supported by joint affidavit evidence by Susan Wanjiru Thuo and Nixon Kariuki Thuo who state that they are the widow and son to the deceased respectively. They also swear the affidavit on behalf of Maurine Judy Mukami Thuo said to be suffering from a disability.
  4. The deponents contend that the purported Will of the deceased is a forgery as it fails to make provision for them and makes reference to property that did not belong to the deceased.
  5. The Objection was heard in full by means of viva voce evidence before my brother Hon. Justice H. M. Nyaga. The Objectors reiterate their affidavit evidence in their oral evidence. The deceased's widow (hereinafter referred to as "Susan" told the court that after the deceased's demise, his driver called Robert handed to her a book the deceased had purportedly given to him as he was being taken to the Hospital where he died. She read the book and noted that it was an ostensible Will which inter alia appointed her sons (James and Geoffrey) as Trustees of her said daughter with special needs. Susan further stated that she disputed authenticity of the Will and doubted the signature thereon as that of the deceased. When she noted that the document bore the stamp of Kagucia Advocate, she



- discussed the same with the advocate who confirmed having been given a copy of the Will. A Document Examiner they approached to examine the document is said to have opined that the same was not executed by the deceased.
6. Robert, the deceased's driver, testified for the Objectors. He stated that he started working as the deceased's driver since 2007. After the deceased's death, he was dismissed but later reinstated. In 2020 the deceased confided in him about a Will he had made which he referred to as "a book". It was agreed between them that the document would always be kept in a vehicle they drove in. The Will was wrapped in a piece of newspaper and stapled to conceal it. Robert said he could not see its contents.
  7. When the deceased fell ill before he died, Robert testified that he accompanied him to hospital in an ambulance. Susan and her son Geoffrey, drove in the Mercedes vehicle containing the Will at the time. The deceased had already instructed Robert that if he died, he would give the document to one of his sons (Nixon) in the presence of his other brothers. Robert learnt of the demise of the deceased the following day. Three days later, he went to remove the document from the car and noticed that the newspaper with which it had been wrapped was missing and it was only contained in an envelope. He gave the document to Nixon in the presence of his brothers as directed by the deceased. According to Robert the deceased never mentioned to him about the presence of another copy or copies of the Will. He did not know who tampered with the Will.
  8. Nixon confirmed the evidence of Susan and Robert. He also doubted authenticity of the Will for the same reasons. In particular, Nixon questions the deceased's purported decision to entrust management of his disabled sister to his brothers (James and Geoffrey). According to Nixon, the Objectors apparently have no complaint with regard to distribution of the deceased's Estate in terms of the purported Will. What they object to is validity of the Will.
  9. The Document Examiner named Emmanuel Karisa Kenga the Objectors commissioned to examine the purported Will testified as well. He was provided with known signatures and handwritings of the deceased. When the witness compared them with a copy of the purported Will provided to him, he formed the opinion that the Will and other documents were made by different authors. Some pages of the Will were also noted to have been printed by different machines and then inserted on the Will. The expert witness told the court that the Will was indicated to have been drawn by Kagucia & Company Advocates. He was not shown the original copy of the document. The witness report was tendered in evidence.
  10. The Respondents called 5 witnesses including the Petitioners for Grant of Letters of Administration herein and/or Executors. They all insist that the Will is valid and deny the forgery claims. The court is told that the deceased had approached the Executors and revealed that he would appoint them as such.
  11. The witnesses named in the Will also testified to execution of the Will by the deceased in their presence. The court summoned Gatenjira Kagucia Advocate suo moto to shed light on his role in the matter. He testified that the deceased was his friend and client since 1990. He had instructed him to draft his Will which took two years to prepare since his Estate was very vast. On 3/2/2016 the deceased executed the Will before the Advocate and in the presence of other witnesses. According to Mr. Kagucia, he prepared 3 bound copies of the Will which the deceased was to keep at Barclays bank. The advocate kept a certified file copy for his records. Counsel confirmed that the deceased's heirs visited him for verification of the copies of the Wills available. He confirmed to them that the Will was authentic. The contents of all the copies of the Will were the same. Mr. Kagucia told the court that each of the counterparts of the Will was the original copy of the other.
  12. I have perused the material on record together with the rival Submissions and evidence.



13. Section 11 *Law of Succession Act* provides that no written Will shall be valid unless the Testator has signed or affixed his mark on it; or it has been signed by another person in his presence and direction. This statutory provision also requires that the signature or mark of the testator should be so placed as to show intention to give effect to the writing as a Will. Two or more witnesses are further required to witness the Will.
14. As observed in *John Wagura Ikiki & 7 Others vs Lee Gachigia Muthoga* [2019] eKLR among judicial decisions cited by Counsel for the Petitioners/Respondents where a Will is regular on the face of it with an attestation clause and signatures of the Testator and attesting witnesses, there is a rebuttable presumption of due execution.
15. The Objectors make serious allegations of forgery or fraud regarding the purported Will. It is trite law that the standard of proof of fraud is higher than the balance of probability in civil cases generally.
16. I find no credible evidence of fraud. Mr. Kagucia Advocate who was a long time advocate and friend of the deceased confirmed that the Will dated 3/2/2016 produced in court is the genuine Will he drafted for deceased. The attesting witnesses also vouch for the Will and so do the Executors the deceased approached to assist in that role. Robert's evidence of apparent interference with the Will cannot be believed given Mr. Kagucia's undiscredited evidence that the contents of the Will in possession of the deceased's relatives are the same ones in the copy in his custody. Besides, Robert's evidence is also suspect since he had been dismissed after the death of the deceased and later re-employed in unclear circumstances before he testified for the Objectors. In the face of the evidence of Mr. Kagucia, the Attesting Witness and the Executors, the opinion of the Document Examiner called by the Objectors is not credible.
17. It is also noted that the Objector's application is at variance with the evidence. Whereas, the application substantially seeks accounts of management of the deceased's Estate, the evidence adduced attacks the validity of the Will.
18. Consequently, the Objection is dismissed and further orders issue as hereunder;-
  - a. The Will dated 3/2/2016 is hereby declared as valid.
  - b. Probate (with the Will annexed) is hereby granted and the Executors thereof are given upto 10/11/2025 when the matter comes up for mention to transmit the deceased's estate in accordance with the Will.
  - c. As this is a family matter, no order is made as to costs.

#### **Summons Dated 1<sup>st</sup> August 2024**

19. The Summons dated 1/8/2024 brought by Marion Wanjohi Wangui ("Marion") seeks the following reliefs:-
  1. Spent.
  2. That this Honourable Court be pleased to make provision for the Applicant as a dependant of the deceased under Section 26 and 29 of the *Law of Succession Act*.
  3. That this Honourable Court be pleased to order the inclusion of the Applicant as a beneficiary in the distribution of the deceased's estate.
  4. That this Honourable Court be pleased to issue any further Orders it may deem fit to grant in the circumstances.



5. That costs of the application be provided for.
20. The Applicant deposes that by affidavit in support of the application she is a beneficiary of the deceased's Estate being his biological daughter. She avers that she was born out of a relationship between the deceased and her mother that began in 1982. Her father's name was not included in the Birth Certificate in order to protect his reputation being "a high profile man" at the time. The deponent further claims that the deceased named her after his deceased mother. According to the Applicant all her other siblings knew her as among the deceased's children and that he provided for her welfare including her school fees. She questions the authenticity of the purported Will of the deceased which does not name her among his heirs.
21. The Applicant further deposes that the deceased had helped her mother secure employment and construct a house in Bahati, Nakuru County. She therefore asserts that she is entitled to a share of the estate of the deceased.
22. The Petitioners/Respondents oppose the application by means of an affidavit in reply. They contend that the Applicant had not proved her relationship with the deceased. The fact that the deceased's name is not stated in her Birth Certificate is said to be further evidence that the deceased was not her biological father. She was not dependent on the deceased at the time of his death, according to the Petitioners.
23. The Objectors do not oppose the application.
24. The Applicant filed a further affidavit reiterating her averments in the affidavit supporting the application.
25. Having read the rival affidavit evidence and submissions; there is no evidence that the deceased paid the Applicant's school fees or otherwise provided for her as claimed. If it were true that she was so close to the deceased as she claims, the deceased would have catered for her in the Will. There is clearly no evidence of the Applicant's dependency on the deceased in his lifetime. The Applicant's claim is uncorroborated by other material independent evidence.
26. On the evidence there is therefore no proof that the Applicant is a beneficiary of the deceased's Estate entitled to part of the Estate pursuant to the provisions of Sections 26 and 29 of the [Law of Succession Act](#).
27. The Application is dismissed with no order as to costs.
28. Ruling accordingly on the two applications.

**J. M. NANG'EA, JUDGE.**

**RULING DATED, SIGNED AND DELIVERED AT NAKURU 17<sup>TH</sup> DAY OF JULY, 2025.**

In the presence of;

Mr. Muriithi Advocate for Mr. Kisilah for Petitioners/Respondents

Mr. Owino Advocate for the Applicant (Application dated 1/8/2024)

Objectors' Advocate,

Court Assistant (Jeniffer)

**J. M. NANG'EA, JUDGE.**

