



REPUBLIC OF KENYA



In re Estate of George Kaberia (Deceased) (Miscellaneous Succession Cause E003 of 2023) [2025] KEHC 10663 (KLR) (14 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10663 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS SUCCESSION CAUSE E003 OF 2023**

SM GITHINJI, J

JULY 14, 2025

IN THE MATTER OF THE ESTATE OF GEORGE KABERIA – DECEASED

BETWEEN

SAMSON MUNGATHIA M'ANGICHIA 1ST APPLICANT

WILLIAM GITONGA M'ANGICHIA 2ND APPLICANT

AND

BABAS LUCIA RESPONDENT

RULING

1. For determination is the Respondent's Preliminary Objection dated 20th May, 2025 on the ground that the applicants do not have locus standi to institute these proceedings.
2. The Preliminary Objection was canvassed by way of written submissions which were duly filed by counsel.
3. The Applicants through the firm of Waruiru, Karuku wangale Advocates filed submissions dated 30/5/2025. Counsel argued that the applicants' legitimate interest in the estate, as brothers to the deceased, was pegged under section 29 of the *Law of Succession Act*. Counsel contended that the Respondent was a total stranger to the deceased, and her claim of being his wife was false, and cited *Re Estate of Charles Kibe Karanja (Deceased)* [2015] eKLR, *Re Estate of Samuel Wambugu Mwangi (Deceased)* [2018] eKLR, *Re Estate of Ngugi Gachina (Deceased)* [2016] eKLR, *Re Estate of M'Ngarithi M'Miriti (Deceased)* [2017] eKLR and *Re Estate of John Musambasi (Deceased)* [2014] eKLR. Counsel asserted that the Respondent's Preliminary Objection was not a pure point of law capable of disposing of the matter without delving into factual disputes, and cited *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696 and *Omondi v National Bank of Kenya Ltd & Others* [2001] EA 177.



4. The Applicants filed a list of authorities dated 30/5/2025 in support of their case.
5. The Respondent through the firm of Mbogo & Muriuki Advocates filed submissions dated 31/5/2025. Counsel submitted that it was trite law that one cannot bring an action in court in relation to the estate of a deceased person without first obtaining limited letters of administration, and cited *Re Estate of David Kiamba Muli (Deceased)* [2021] eKLR and *Trouistik Union International & another v Jane Mbeyu & another* [1993] eKLR.

Determination

6. The sole issue for determination is whether the Preliminary Objection has been properly raised.
7. What constitutes a Preliminary Objection has been defined in the locus classicus case of *Mukisa Biscuit Company v Westend Distributor Limited* (1969) EA 696 as follows; “A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”
8. The Applicants filed the summons for revocation of grant dated 16/4/2025 in their capacities as brothers to the deceased, and thus interested parties within the realm of section 76 of the *Law of Succession Act*, which succinctly makes it clear that a grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion. As such, they did not require a limited grant Ad Litem to file their application. Needless to state, the limited grant Ad Litem has already been issued to the Respondent, and another limited grant in respect of this estate cannot conceivably issue unless the grant herein issued is first revoked. *In Re Estate of Indeche Waswa Wikinza alias Indeche Waswa Wikunza (Deceased)* (Succession Cause 569 of 2015) [2022] KEHC 14016 (KLR) (21 October 2022) (Ruling), the court (W. Musyoka J) had this to say; “It is unacceptable and impermissible for two separate grants to be issued in respect of the same individual deceased person. There should be only one succession cause initiated in respect of the estate of one intestate, and one grant of letters of administration intestate issued in respect of such intestate estate.”
9. The upshot from the foregoing is that the Preliminary Objection dated 20/5/2025 was improperly raised and it is hereby struck out with costs to the Respondent.

DATED AND DELIVERED AT MERU THIS 14TH JULY, 2025

S.M. GITHINJI

JUDGE

Appearances:-

Ms. Kyalo holding brief for Mr. Wachira for the Applicant.

Mr. Muriuki for the Respondent (absent).

