



**In re Estate of Felix Ndungu Mwatha (Deceased) (Succession Cause  
1797 of 2014) [2025] KEHC 10962 (KLR) (Family) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10962 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 1797 OF 2014  
CJ KENDAGOR, J  
JULY 11, 2025  
IN THE MATTER OF THE ESTATE OF FELIX NDUNGU MWATHA (DECEASED)**

**BETWEEN**

**TERESIA WAITHIRA KARANU ..... APPLICANT**

**AND**

**MARY WANGUI NDUNGU ..... 1<sup>ST</sup> RESPONDENT**

**JOSEPH WAINAINA NDUNGU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The parties involved in this ruling have been engaged in a long-standing succession matter. There were parallel succession proceedings in two separate files that were subsequently flagged and consolidated. The Court set down the matter for viva voce evidence to determine whether the estate will be administered testate or intestate.
2. The matter was referred to Court Annexed Mediation; when it was not successful, it was set down for hearing. It was partially heard, and when the case was scheduled for further hearing, a consent dated 11<sup>th</sup> February, 2025 was recorded and adopted as an order of the Court, thereby marking the matter as settled.
3. The consent was recorded in the following terms;
  - a. “Joseph Wainaina Ndung’u and Teresia Waithira Karanu are hereby appointed as the administrators of the estate of Felix Ndung’u Mwatha (Deceased);
  - b. A certificate of Confirmation of Grant do issue forthwith in line with the proposed distribution as per the schedule herebelow:-



Property	Beneficiary	Shares
Ndumberi/Ndumberi 664	Teresia Waithira Karanu	3 Acres
	<p>Mary Wangui Ndung'u – wife</p> <p>Joseph Wainaina Ndung'u – son</p> <p>Ziporah Nyambura Gachuhi – daughter</p> <p>Jackson Ndungu Waithira – grandson</p> <p>Martin Wanda Waithira – grandson</p> <p>Hannah Njeri Ndungu – daughter</p> <p>Margaret Wambui Ndungu – daughter</p> <p>Paul Mbogo Ndungu – son</p> <p>Hannah Ngirote Waituna – daughter-in-law</p> <p>James Mwaura Ndungu – son</p> <p>Leonard Njuguna Ndungu – son</p> <p>Peter Muchiri Ndungu – son</p> <p>John Mathegi Ndungu – son</p>	To share equally the remainder thereof which measures 6.29 acres, or thereabout
Ndumberi/Ndumberi 1259	<p>Mary Wangui Ndun'u</p> <p>Joseph Wainaina Ndung'u</p> <p>Zipora Nyambura Gachuhi</p> <p>Jackson Ndungu Waithira</p> <p>Martin Wanda Waithira</p> <p>Hannah Njeri Ndungu</p> <p>Margaret Wambui Ndungu</p>	To share equally among all the listed beneficiaries



Property	Beneficiary	Shares
Ndumberi/Ndumberi 1259	Paul Mbogo Ndungu Hannah Ngirote Waituna James Mwaura Ndungu Leonard Njuguna Ndungu Peter Muchiri Ndungu John Mathegi Ndungu	To share equally among all the listed beneficiaries
Langata Residential Unit House No. B7-68. Ngong 2 acres parcel. Karagita 4 plots – Certificate Nos.002, 238, 1182, 1205. Njamba Tikere 2 plots. Dandora 4 plots. Kanjata – 1 plot Kangoya. Karangatha Farmers Plot 43/79. Plot No.454 Githurai.	Joseph Wainaina Ndung’u Ziporah Nyambura Gachuhi  Paul Mbogo Ndungu James Mwaura Ndungu Leonard Njuguna Ndungu Peter Muchiri Ndungu John Mathegi Ndungu	To share equally among all the beneficiaries
Shares: Nation Media Group Limited. Liberty Kenya Holdings Limited. Co-operative Bank of Kenya Ltd. TPS Eastern Africa Limited. Williamson Tea. Kenya Commercial Bank Limited. CFC Stanbic Holdings Limited. National Bank of Kenya. B.A.T Kenya Limited.	Joseph Wainaina Ndung’u Ziporah Nyambura Gachuhi  Paul Mbogo Ndungu James Mwaura Ndungu Leonard Njuguna Ndungu Peter Muchiri Ndungu John Mathegi Ndungu	To share equally among all the beneficiaries



East Africa Breweries Limited.		
Kengen Ltd.		
Safaricom Limited.		
C.F.C Bank Account.		
National Bank of Kenya Ltd.		
Co-operative Bank of Kenya.		
Standard Chartered Bank of Kenya.		

- c. All costs including court fees, advocates fees and survey fees shall be borne by the estate.

Signed Signed

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J.M. Njengo & Co. Manasses Mwangi & Associates

Advocate for the Applicants/ Advocate for the Objector/

Beneficiaries Beneficiary.”

4. The applicant applied to have the consent set aside, and that application is still pending.
5. Before the application for setting aside the consent was heard, Mary Wangui Ndungu, the 2<sup>nd</sup> Respondent, passed away on 1<sup>st</sup> July 2025. The Applicant has presently moved the Court via a notice of motion application that is seeking the following orders;
- i. That this honourable court be pleased to issue a temporary injunction restraining the respondents, their agents, family members or any other person acting on their behalf from interring the late Mary Wangui Ndung’u, the 1<sup>st</sup> Respondent herein, on any portion of Land Parcel No. Ndumberi/Ndumberi/664 save for the specific portion lawfully allocated to her under Clause 6 of the deceased’s Will and as clearly delineated in the annexed estate distribution map, pending the hearing and determination of this application;
  - ii. That the honourable court be pleased to issue a permanent injunction restraining the Respondents, their agents, family members or any other person acting on their behalf from interring the late Mary Wangui Ndung’u on any portion of Land Parcel No. Ndumberi/Ndumberi/664 other than the portion specifically allocated to her under Clause 6 of the deceased’s Will and as shown in the annexed distribution map;
  - iii. That the Officer Commanding Station, Ndumberi Police Station, do supervise enforcement of the court orders and provide security;
  - iv. That this honourable court be pleased to issue any further orders it deems just and expedient in the circumstances;
  - v. That costs of this application be provided for.
6. The application is opposed.



### **The applicant's case**

7. The Applicant argues that the first Respondents' family plans to bury her on a portion of the land identified as Ndumberi/Ndumberi/664, which belongs to her. According to the Applicant, this is in contrast to the portion designated for Mary by the deceased Felix.
8. The Applicant contends that the intended burial on her portion constitutes unlawful trespass and undermines the testamentary wishes of the deceased, thereby infringing upon her proprietary rights and rendering the ongoing succession proceedings moot.
9. The Applicant asserts that Mary was divorced from the deceased, Felix, during his lifetime and has included copies of the proceedings to support this claim. Additionally, the Applicant states that she does not oppose Mary being buried in the Respondent's designated portion of the estate, as allocated by the deceased Felix.

### **The respondents' case**

10. The Respondents maintain that the part where they intend to inter Mary's remains is a part next to the graveyard where the deceased Felix was buried, and which is not subject to subdivision. They argue that the application is based on the alleged Will, which has never been validated in a Court of law.
11. They contend that the Law of Succession acknowledges former wives as rightful beneficiaries of the estate.
12. Further, they assert that the application lacks merit at this stage, given that the estate has yet to be distributed among the heirs.

### **Analysis and determination**

13. The issue to be determined is the appropriate orders the Court should issue regarding the burial of Mary Wangui Ndungu on the designated parcel of land, Ndumberi/Ndumberi/664.
14. Some of the issues raised by the parties, such as the validity of the Will and Mary's marital status and its linking to the deceased, among others, require a more detailed examination than what was provided in the affidavits.
15. However, it is clear that they all agree on their involvement in the succession case: the Applicant is the daughter and only child from the first house, while Mary and Joseph are from the second house.
16. The Applicant does not oppose interment in the section she states has been designated for the second house. The consent states that 3 acres of the land will be allocated to the Applicant, while 6.29 acres go to the Respondents' family. Although there are other properties, this application focuses solely on the specific land parcel no. 664.
17. I have reviewed the divorce proceedings presented by the Applicant and the evidence provided. The Respondents do not dispute that the marriage had been dissolved, but argue instead that, as a former wife, Mary is entitled to benefit from the estate as a beneficiary. Mary was not living on the specific parcel of land. The Applicant states that she resides on that part and that her mother is buried there, beside her husband Felix, who passed away after her.
18. I am convinced that a well-established status quo has developed over time, enabling both households to utilize the parcel of land in question. This arrangement seems to have persisted for many years.



The contested consent and the contested Will indicate that the two households are to operate independently on that parcel of land.

19. Both parties' positions suggest they each hold exclusive rights to specific sections of the land in question. Permitting burial in the disputed area could result in conflict. Parties shall coordinate to identify an appropriate location for the interment other than the Applicant's section.
20. The Applicant has fulfilled the conditions for obtaining an injunction. She has presented a prima facie case concerning the specific portion at issue, demonstrated a significant likelihood of suffering loss if the injunction is not granted. Furthermore, the balance of convenience tilts in her favour.
21. The dispute has been ongoing for a long time, and it is not in the interest of justice to further prolong it. The Court will prioritize this matter to ensure a swift resolution. The parties involved are required to take necessary steps to expedite this process without delay.
22. The application is partially allowed. Disposition;
  - i. The remains of Mary Wangui Ndungu shall not be interred in the Applicant's portion of land in the parcel Ndumberi/Ndumberi/664.
  - ii. The O.C.S. Ndumberi Police Station to supervise the enforcement of the Court Order and provide security.
  - iii. Costs in the cause.
23. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 11<sup>TH</sup> DAY OF JULY, 2025.**

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**C. KENDAGOR**

**JUDGE**

In the presence of:

Court Assistant: Beryl

Ms. Asiago, Advocate for the Applicant

Mr. Njengo, Advocate for the Respondent

