



In re Estate of Norman Kimani Wangué alias Norman Kimaniwangoé (Deceased) (Probate & Administration 8 of 2025) [2025] KEHC 13118 (KLR) (Family) (23 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13118 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
FAMILY
PROBATE & ADMINISTRATION 8 OF 2025
KW KIARIE, J
SEPTEMBER 23, 2025**

BETWEEN

HOSEA KIMANI WANGUI ADMINISTRATOR

AND

GRACE NJERI KIMANI ADMINISTRATOR

AND

ELIJAH KAGO KIMANI 1ST APPLICANT

ROSE WARUGURU KIMANI 2ND APPLICANT

RULING

1. Elijah Kago Kimani and Rose Waruguru Kimani, the applicants herein, moved the court through a Summons dated 27th day of March 2025 under Rule 49 of the Probate and Administration Rules. They are seeking the following orders:
 - a. Pending the hearing and determination of this application inter partes, this honourable court be pleased to issue an order seeking to reinstate the summons for the confirmation of the grant dated 6/6/2024.
 - b. Upon reinstatement, the applicants, Elijah Kago Kimani and Rose Waruguru Kimani, will be substituted as the second Administrators/respondents in the Estate of the late Norman Kimani Wangué, alias Norman Kimani Wangoé (deceased), in place of Grace Njeri Kimani.
The cost of this application will be provided for.
2. The application is premised on the following grounds:



- a. That Grace Njeri Kimani was the 2nd administrator /respondent in the estate of Norman Kimani Wangué alias Norman Kimani Wangué (deceased).
 - b. That 2nd administrator/respondent, Grace Njeri Kimani, died on 29/9/2023 during the pendency of the cause.
 - c. That there is a need to substitute Elijah Kago Kimani and Rose Waruguru Kimani as the 2nd administrators/respondents in the estate of Norman Kimani Wangué alias Norman Kimani Wangué (deceased).
 - d. That delay in applying was occasioned by the inadvertent mistake in filing the ad litem concerning the estate of Grace Njeri Kimani (deceased).
 - e. The delay in applying was not deliberate but due to factors beyond the applicant's control.
 - f. That the cause herein is pending and has not been concluded, and there is a need to make Elijah Kago Kimani and Rose Waruguru Kimani parties to these proceedings to conclude this cause.
3. The 1st administrator filed grounds of opposition as follows:
- a. The application is a non-starter, inept and grossly abuses the court process.
 - b. The summons had not been consented to, nor the mode of distribution agreed upon by all the beneficiaries of the deceased's estate.
 - c. The applicants have not annexed to the instant application the alleged Summons of Confirmation of Grant that were not served upon the first administrator/protestor.
 - d. The applicants have equally not annexed the Limited Letters of Administration Ad Litem that vest them with the requisite legal power to represent the Estate of Grace Wanjiku Kimani (deceased).
 - e. The applicants are intermediary [sic] to the deceased by the fact that they are harvesting trees and leasing out the deceased's land to third parties even before attaining the Certificate of Confirmation of Grant.
 - f. The applicants have not sought nor annexed consent from other beneficiaries of Grace Njeri Kimani's (deceased) estate.
 - g. There is an error apparent on the face of the record regarding the provisions of the law that the applicant seeks to rely on.
 - h. The application is unmeritorious, and no grounds are adduced to warrant the orders sought.
 - i. The application and suit are non-started, redundant and incurably inept.
 - j. The application is a gross abuse of the court process, and the orders sought are superfluous and incapable of being granted.
 - k. The orders sought are thus misconceived, superfluous and cannot be granted.
4. Rule 49 of the Probate and Administration Rules provides as follows:

“A person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file a summons supported, if necessary, by affidavit.”



5. Section 81 of the *Law of Succession Act* provides:

“Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:

Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.”

6. The legal position is very clear regarding the consequences when one or more of the several executors or administrators to whom a grant of representation has been made die. All powers and duties of the executors or administrators are vested in the surviving executor or administrator. The only exception is in a continuing trust. This is not the case in this matter. In re Estate of George Ragui Karanja (Deceased) [2016] eKLR, Musyoka J. held:

“The *Law of Succession Act* does not expressly provide for the substitution of personal representatives who die in office, particularly in cases where the estate is left without one. The closest provision is section 81 of the Act, which provides for vesting of the powers and duties of personal representatives in the survivor or survivors of a dead personal representative...”

7. Since there is no reference to a continuing trust, I find that the application for the substitution has no legal basis. Therefore, it is dismissed. As this is a family matter, each party will bear its own costs.

8. The surviving administrator should act promptly, distribute the estate, and finalize the accounts before November 25, 2025. Failure to comply will automatically revoke the grant.

DELIVERED AND SIGNED AT NYANDARUA, THIS 23RD DAY OF SEPTEMBER 2025.

KIARIE WAWERU KIARIE

JUDGE

