



REPUBLIC OF KENYA



In re Estate of the Late Johnson Mburu Karichu (Succession Cause 25 of 2016) [2025] KEHC 12717 (KLR) (17 September 2025) (Order)

Neutral citation: [2025] KEHC 12717 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 25 OF 2016
RN NYAKUNDI, J
SEPTEMBER 17, 2025
IN THE MATTER OF THE ESTATE OF THE LATE JOHNSON MBURU KARICHU
IN THE MATTER OF
LUCY NYAMBURA MBURU PETITIONER**

ORDER

1. Before this court is an application dated 20th May 2025. The Applicant is seeking the following orders;
 - a) The certificate of confirmation of Grant issued on 19th July 2017 and amended on 11th December 2018 be amended further to reflect the deceased assets namely:
 - i) Shares in Total Energies Marketing Kenya PLC.
 - ii) Shares in Kenya Airways.
 - iii) Shares in National Bank of Kenya Limited.
 - iv) Shares in Housing Finance Company of Kenya Limited.
 - v) Shares in Eveready.
 - vi) Shares in Safaricom.
 - vii) Shares in Starbucks Hotel. viii) Langas Phase 2/Shect IV/19.
which were not included in the list of assets.
 - b) Upon grant of prayer (a) above, a further amended certificate of confirmation of grant be issued.
 - c) Costs be in the cause.
2. The application is made on the following grounds;



- a. The administrator of the estate of the deceased has come to learn that the deceased had other assets that were not included in the deceased's list of assets.
 - b. At the time of applying for letters of administration, this information was not available to the administrator
3. The application is supported by an affidavit which states as follows;
- i. I am the administrator of the estate of the deceased herein and I am therefore duly competent to swear this affidavit in support of the application before this Honourable Court.
 - ii. That the grant of letters of administration herein was confirmed on 13th July 2017. Annexed is a copy of the certificate of confirmation of grant marked as annexure LNM 1.
 - iii. That certificate of confirmation of grant was later amended on 11th December 2018. Annexed is a copy of the amended certificate of confirmation of grant marked as annexure LNM 2.
 - iv. That I have since come to realize that the deceased had other assets that were not included in his list of assets. Attached are the proof of ownership marked as annexure LNM 3.
 - v. I only came to know about this after the letters of administration were confirmed.
 - vi. That it is therefore only fair and in the interest of justice that the aforementioned assets be included in the list of assets of the deceased.
 - vii. That all I have deponed to hereinabove is true to the best of my knowledge.
4. This amendment is based on the basic structure of the certificate of confirmation of grant dated 19th July 2017 which provides as follows;
- Schedule



Name	Description Of Property	Share Of Heirs
Lucy Nyambura Mburu	<p>A)1. Eldoret Municipality Block 1/33</p> <p>2. Eldoret Municipality Block 1/34</p> <p>3. Eldoret Municipality Block 13/420</p> <p>4. Eldoret Municipality Block 7/186)</p> <p>5. Eldoret Municipality Block5/241/1.</p> <p>6. Eldoret Municipality Block13/419</p> <p>7. Nairobi/block 110/863</p> <p>8. 1 Share In Muringa Management Company Ltd) (1-16</p> <p>9. Kitale Municipality Block 2116/355/xiii.</p> <p>10. Kitale Municipality Block 19 Unsurveyed</p> <p>11. Kitale Municipality Plot Number 2116/xvi/106)</p> <p>12. Nakuru/menengai/13</p> <p>13. Plot Number 72 (nakuru)</p> <p>14. 500 Shares In Starbucks Hotel And Restaurant)</p> <p>15. One Share In Njombuka Investment Limited</p> <p>16. Fep Holdings Limited-county Investment Companies</p>	To Hold Trust For All The Children
Lucy Nyambura Mburu	<p>17. Motor Vehicle Registration Kaj 122 Mercedes Benz.</p> <p>18. Kbm 828 B Toyota Hilux</p> <p>19 Kbt 600 E Toyota Land Cruiser</p>	Whole



	<p>20 Kbr 889 N Toyota Saloon</p> <p>21 Kqj 360 Ford Tractor</p> <p>22 Ktv 242 Ford Tractor</p> <p>23 Za 5427 Warren Trailer</p> <p>24 Za 6446 Warren Trailer</p> <p>25 Kwb 387 Isuzu Lorry</p> <p>26 Kzs 227 Peugeot Pick Up</p> <p>27 Ksg 877 Peugeot Pick Up</p> <p>28 Savings Account No XXXXXX At Barclays Bank</p> <p>29. Savings Account Number XXXXXX 1147 At Family Bank</p> <p>30. Standard Chartered Bank</p> <p>A) Savings Account Number XXXXXXXXXXXX</p> <p>B) Current Account Number XXXXXXXXXXXX</p> <p>C) Fixed Deposit Account Number XXXXXXXXXXXX</p> <p>31. I& M Bank</p> <p>A) Current Account Number XXXXXXXXXXXXXXXXXX</p> <p>B) Fixed Deposit Accounts Numbers</p> <p>I. XXXXXXXXXXXXXXXX</p> <p>Ii. XXXXXXXXXXXXXXXX</p> <p>Iii. XXXXXXXXXXXXXXXX</p> <p>Iv) XXXXXXXXXXXXXXXXXX</p> <p>V) XXXXXXXXXXXXXXXXXX</p>	
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5. The deceased estate is governed by the provisions of the Law of Succession Chapter 160 whose date of commencement is 1 July 1981. Section 2(1) of Chapter 160 provides as follows:

“except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to all cases of intestate or testamentary succession to the estate of the deceased persons



dying after the commencement of this Act and to the administration of the estates of those persons.”

6. In essence depending upon the character and the structure of the family of the deceased the following provisions provide the general and specifics and the distribution of the intestate estate. The rights of children are encapsulated in Sections 35(2) (3) (5) and 38 of the [Law of Succession Act](#). Section 35(2) (3) (5) provides as follows;

“35(2) A surviving spouse shall, during the continuation of life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.

(3) Where any child considers that the power of appointment under subsection (2) has been unreasonably exercised or withheld, he or, if a minor, his representative may apply to the court for the appointment of his share, with or without variation of any appointment already made.

(5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on upon the surviving child, if there be only one, or be equally divided among the surviving children.

Section 38 provides as follows: Where an intestate has left a surviving child or children but no spouse, the net intestate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”

7. Whereas the rights and division of polygamous estate is outlined in Section 40 of the Act which provides as follows;

“40(1) Where an intestate has married more than once under any system of law permitting shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate estate with each house shall then be in accordance with the rules set out in sections 35 to 38.”

8. The current application and basic legal instrument on transmission of this estate dated 19th July 2017 provokes practical question on the interpretation of the provisions of the [Law of Succession Act](#) to the facts presented by the administrators and the beneficiaries alike which essentially is in violation or contravention of the same law. Probate courts applying the doctrine of equality should not change the law but it should prevent administrators and the beneficiary from enforcing legal judgements that are inequitable. The certificate of confirmation of grant does not fill the spirit and the letter, the equity shaped gap in my understanding of the law. The model of vesting the entire estate one beneficiary in exclusion of the other beneficiaries who have come of age and are under the age of majority threatens or infringes the provisions of Section 35, 36, 37, 38 as read with Section 40, 41 and 42 of the Law od Succession Act. There must have been nondisclosure or misrepresentation of facts to the session court at a time resulting in an error of law apparent on the face of the record. The administrators therefore



are put on notice to move purposively with a view to comply with the constitutional imperatives and the *Law of Succession Act* to undo the illegalities likely to occasion prejudice and injustice to the heirs of the estate. What the law contemplates and commonly misunderstood is for parties to enter into a mediation agreement of a consent to be adopted by the probate court which is not in violation of the legal policy and statute law governing succession dispute. For those reasons a status conference shall be held on 21/10/2025 before this court.

GIVEN UNDER MY HAND AND SEAL OF THE COURT THIS 17TH SEPTEMBER 2025

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R. NYAKUNDI

JUDGE

