



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

In re Estate of Adam Shaiya Ahmed alias Adam Shiya (Deceased) (Succession Cause 702 of 2012) [2025] KEHC 14536 (KLR) (16 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14536 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 702 OF 2012
DKN MAGARE, J
OCTOBER 16, 2025
IN THE MATTER OF THE ESTATE OF ADAM
SHAIYA AHMED ALIAS ADAM SHIYA (DECEASED)**

BETWEEN

MOHAMED ADAM SHAIYA 1ST PETITIONER

KHADIJA ADAM SHAIYA 2ND PETITIONER

AND

ISAADIN ABDIHAKIM MOHAMED APPLICANT

RULING

1. By the summons for substitution dated 30.6.2025, the Applicant sought for the following reliefs:
 - a. That the name of Khadija Adam Shaiya (Deceased) being a co-administrator of the estate of Adam Shaiya alias Adam Shiya be substituted with the name of Isaadin Abdihakim Mohamed, the Applicant in respect of the Grant of Letters of Administration Intestate issued on 27th November 2015 and a fresh Grant be issued to Mohamed Adam Shaiya and Isaadin Abdihakim Mohamed.
 - b. That the grant issued on 4th December 2012 and confirmed on 27th November 2015 be amended to substitute the name of Khadija Adam Shaiya as co-administrator and beneficiary with the name of Isaadin Abdihakim Mohamed.
 - c. The costs be in the cause.
2. The summons was supported by the affidavit of Isaadin Abdihakim Mohamed and was based on the following grounds:
 - i. Khadija Adam Shaiya passed away on 24.6.2018 before the grant could be confirmed.



- ii. The Applicant is the son of the said Khadija Adam Shaiya and administrator of her estate pursuant to the grant dated 24.6.2024.
 - iii. The Applicant obtained the consent of his sister Fauza Ruman Mohamed Hassan who is also a beneficiary.
3. The 1st Petitioner filed a Replying Affidavit indicating to be dated 30.9.2024 and sworn by Mohamed Adam Shaiya by which it was deposed as follows:
- a. That the application for substitution is essential and welcome.
 - b. However, one Hassan Abdul Shaiya should be appointed as co-administrator instead of Isaadin Abdihakim Mohamed as Hassan is resident in Kenya on full time basis while the Applicant and his sister reside abroad only visiting occasionally and will not be able to fully administer the estate.
 - c. The Applicant and his sister are not cooperative and are nonresponsive to the matters administration of the estate.

Analysis

4. Following the death of the administrator, the applicant petitioned for a grant of representation vide Nyeri Succession Cause No. E322 of 2023 for purposes of substitution in the instant succession suit. A copy of the grant dated 22.11.2023 was attached to these summons.
5. The application is not opposed as regards the need for substitution but the Petitioner makes a proposal that Hassan Abdul Shaiya should be appointed as co-administrator instead of Isaadin Abdihakim Mohamed.
6. The applicant sought that he be substituted in the place of his mother who was a co-administrator of the estate of the deceased whose estate is subject of these proceedings.
7. It is not in dispute that the Applicant is one of the children of the said deceased administrator and neither is it in dispute that the deceased sought to be substituted was a co-administrator of the deceased's estate.
8. Section 81 of *Law of Succession Act* provides as doth:

“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.”
9. Where the intestate is polygamous, death of one of the administrators may require a replacement for purposes of the house he/she represented. In the persuasive authority of *In re Estate of Tuaruchiu Marete (Deceased)* [2019] eKLR, Justice F. Gikonyo expounded on the instances where an additional administrator can be appointed to substitute a deceased administrator. The learned Judge held that:

“(11) There are however situations where an additional administrator should be appointed. For instance where there is a resulting trust, a sole surviving



administrator is required to apply for an additional administrator to be appointed which failing the court will appoint on its own motion. Similarly, where the intestate is polygamous, death of one of the administrator may require a replacement for purposes of the house he represented. Or for a good cause and in the best interest of all persons concerned the court may appoint an additional administrator of an estate. This is in discretion under section 66 of the Law of Succession Act. Therefore, there is no complete prohibition of appointing another administrator in addition to a surviving administrator or administrators. Nothing wrong in the appointment of the first administrator herein.”

10. It therefore means that where there is good cause and in the best interest of all the persons concerned, the court may appoint an additional administrator where one of the co-administrators is deceased.
11. In the instant case, I do not find basis for the allegation by the 1st Petitioner that the Applicant should not be substituted as co-administrator because the Applicant is not a full-time resident in Kenya. The 1st Petitioner has also not demonstrated that the Applicant ranks any lower in the chain of who should be administrator. Section 66 of the Law of Succession Act provides for the general guide as to who should be appointed as an administrator of the estate of a deceased person.
12. The Applicant attached a consent by Fauza Ruman Mohamed Hassan his sister consenting to his co-administration. The application is merited and I allow it.

Determination

13. In the upshot, I make the following orders:
 - a. The name of Khadija Adam Shaiya (Deceased) being a co-administrator of the estate of Adam Shaiya alias Adam Shiya is substituted with the names of Hassan Abdul Shaiya and the Applicant in respect of the Grant of Letters of Administration Intestate issued on 27th November 2015, and a fresh Grant shall be issued to Mohamed Adam Shaiya, Hassan Abdul Shaiya and Isaadin Abdihakim Mohamed.
 - b. The properties forming estate of Khadija Adam Shaiya be registered in the same name until they carry out succession.
 - c. Transmission be completed by 16/03/2026.
 - d. Mention on 19/03/2026 to confirm transmission.
 - e. Each party to bear own costs.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 16TH DAY OF OCTOBER, 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of: -

Mr. Kimani Kibichu for the Petitioner/Respondent

Mr. Ronald Wambugu for the Applicant

Court Assistant – Michael

