



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Francis Waita Mbaki (Deceased) (Succession Cause 92 of 1997) [2025] KEHC 14305 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14305 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 92 OF 1997**

G MUTAI, J

OCTOBER 9, 2025

IN THE MATTER OF THE ESTATE OF FRANCIS WAITA MBAKI (DECEASED)

RULING

1. Through an application dated 27th February 2025, the applicant, Lucy Msigo Waita, seeks the appointment of Stephen Mbaki Waita, Lucy Msigo Waita, Tracy Chao, and Francis Waita to be appointed as administrators of the instant estate, and for the grant to be confirmed forthwith so that they can administer the estate and distribute it without further delay.
2. The application is based on the grounds that the applicant is the daughter of the deceased. It is stated that the grant, which had been issued to Stephen Mbaki and Gertrude Chao Waita (the now deceased widow of the decedent herein), who I shall hereafter refer to as “the matriarch”, was revoked on 12th February 2018. Although the court ordered the appointment of new administrators within 90 days, including the reappointment of previous administrators and two additional ones from the decedent's children, this order had not been fulfilled. As a result, the estate was being wasted, with third parties taking advantage of the situation to intermeddle in the estate.
3. The second application is dated 7th April 2025. This application was, however, withdrawn. I shall mention here for purposes of context. Vide this latter application, Jules Waita, Gregory Waita, Gertrude Chao Waita (the granddaughter of the decedent), and Yvonne Waita seek to be appointed as administrators and for Stephen Mbaki Waita to be ordered to give a full and accurate account of all the dealings he had with the estate to date, or in the alternative, for Jules Waita, Gregory Waita, and Gertrude Chao Waita to be appointed as administrators together with Stephen Mbaki Waita.
4. The applicant, in respect of the 1st application, Lucy Msigo Mbaki, filed a replying affidavit sworn on 16th May 2025 in which she asked the court to dismiss the application dated 7th April 2025 on the grounds that Jules Waita, Gregory Waita, and Yvonne Waita had disowned the affidavit.
5. As earlier indicated, the application dated 7th April 2025 was withdrawn. The 3rd applicant in the said application filed the 3rd application herein dated 13th May 2025, vide which she sought to have Gertrude Chao Waita (herself) and Evans Kibuchi Waita be appointed as administrators of the estate,



- alternatively Gertrude Chao Waita and Evans Kibuchi Waita and Stephen Mbaki Waita be appointed as the administrators of the estate, and for the latter to render accounts of the estate.
6. The second application was opposed through the affidavit of Lucy Msigo Waita, sworn on 28th May 2025. The two applications were canvassed together by way of written submissions.
 7. In support of the application dated 13th May 2025, and in opposition to the application dated 27th February 2025, it was urged that the previous grant was revoked by his Lordship, Judge Edward Mureithi, on 12th February 2018. The learned judge ordered in his judgment that a new grant be issued to Gertrude Chao Waita (the matriarch), Stephen Mbaki Waita, and two other children of the deceased.
 8. It was submitted that Gertrude Chao Waita (the applicant) and Evans Kibuchi Waita are the grandchildren of Francis Waita Mbaki, being the children respectively of Esther Makumbo Waita (deceased) and George Francis Waita (deceased), both of whom were the children of Francis Waita Mbaki (deceased). Counsel submitted based on the decision of the court in re Estate of Geoffrey Robin Mkimbo (deceased) [2023] KEHC 1236 (KLR) that, as grandchildren, the applicants could step into the shoes of their deceased parents and take their parents' shares in the estate of the grandfather.
 9. Reliance was also placed in the case of In re Estate of Elijah Kaseke Makau (Deceased) [2021] KEHC 9726 (KLR).
 10. It was urged that it is necessary for the accounts of the estate to be rendered for the period Stephen Mbaki Waita was the sole administrator.
 11. Submissions of the applicant to the first application, that is, the one dated 27th February 2025, were filed. It was urged on her behalf that Gertrude Chao Waita (the matriarch) was deceased and that only three children of the deceased remained: Francis Mbaki Waita, Mary Waruguru Waita, and Lucy Msigo Waita.
 12. It was prayed that the application dated 13th May 2025 be dismissed, while that of 27th February 2025 be allowed.
 13. I have looked at the two applications as well as the decision of E Mureithi, J, vide which he revoked the grant made on 19th May 2006 and ordered that a new grant be issued to Gertrude Chao Waita (matriarch), Stephen Mbaki Waita, and two other administrators to be appointed from among the adult children of the deceased herein.
 14. It is a common ground that Gertrude Chao Waita is deceased. Stephen Mbaki Waita is still alive. He, however, didn't take part in the proceedings before me. At the time of the writing of this ruling, only three children of the deceased are still in the land of the living: Stephen Mbaki Waita, Lucy Msigo Waita, and Mary Waruguru Waita.
 15. It is unfortunate that the estate of the deceased remains unadministered despite the clear directions contained in the judgment. The learned judge was clear that the estate had to have four administrators. That is Gertrude Chao Waita (now deceased), Stephen Mbaki Waita, and two other administrators who have to be the children of the deceased. Since there are two other living children of the deceased, I have no hesitation in appointing Lucy Msigo Waita and Mary Waruguru Waita as two additional administrators. I do so to give effect to the judgment of E. Mureithi J and also in exercise of this court's discretion under Section 66 of the [Law of Succession Act](#). I shall reproduce the said section below.
 16. Section 66 of the [Law of Succession Act](#) provides that:-
 - “When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration



shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference:-

- (a) surviving spouse or spouses, with or without association of other beneficiaries;
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- (c) the Public Trustee; and
- (d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

17. My understanding of the judgment of my brother Judge is that he intended to have four administrators of the estate. I am not sitting on appeal against the said judgment, nor could I, in any event, since we have equal jurisdiction. I am also not considering an application for review of the said judgment. My role is to give effect to the said judgment, taking into account the changed circumstances, in a manner consistent with the pith and substance of the findings of the learned Judge.
18. That being the case, I must appoint a 4th administrator so that there are four administrators as intended by the learned judge. Since the rest of the beneficiaries are deceased, their children step into their shoes and take their place. I am guided by the decision of the court in re estate of Geoffrey Robin Mkimbo (deceased) [2023] KEHC 1236 (KLR), where it was stated that:-

“It is trite law that grandchildren cannot inherit their grandparent/s directly. The only time they can do so is when their parent has predeceased the grandparent. This position was upheld in the case of In re Estate of Hellen Wangari Wathiai (deceased) [2021] eKLR...”
19. In the case of In the Matter of the estate of Veronica Njoki Wakagoto (Deceased) [2013] KEHC 1930 (KLR), it was stated:-

“Under Part V, grandchildren have no right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents’ indirectly through their own parents, the children of the deceased. The children inherit first, and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents...”
20. I agree with the above decisions.
21. In exercise of my discretion, I appoint Evans Kibuchi Waita as the fourth administrator. He is the son of the late George Francis Waita, who, as I have indicated above, was in turn the son of the deceased.
22. I have done so to avoid further acrimony within the family, to promote inclusivity and diversity, and to avoid a situation where there is an appearance of a winner or a loser in this matter.
23. I order that a new grant be issued forthwith to Stephen Mbaki Waita, Lucy Msigo Waita, Mary Waruguru Waita, and Evans Kibuchi Waita. The administrators should apply for confirmation of the grant within 90 days of the date hereof.



24. In the interest of justice, and as the estate has remained unadministered for a long period of time, I order Stephen Mbaki Waita, who was the joint/sole administrator of the estate from February 2018, to provide an account of his dealings with the estate of the deceased since 12th February 2018 to date. The account should be provided within 30 days from the date hereof.
25. This is a succession cause between close family members. Under the circumstances, the parties shall bear their own costs, as an order of costs won't promote peace, harmony, and/or reconciliation among them.
26. It is so ordered.

DATED AND SIGNED AT MOMBASA, THE 9TH DAY OF OCTOBER 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

Gregory Mutai

JUDGE

In the presence of:-

Ms Mokaya, for Lucy Msigo Waita;

Ms Munyoki, holding brief for Mr Mwangi Ndegwa, for Gertrude Chao Waita; and

Arthur - Court Assistant.

