



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Mwaniki Kibara (Deceased) (Succession Cause
E010 of 2024) [2025] KEHC 15591 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15591 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE E010 OF 2024
EM MURIITHI, J
OCTOBER 28, 2025**

BETWEEN

RICHARD WACHIRA GACHIANI 1ST CITOR

PAULINE NYAWIRA MAINA 2ND CITOR

AND

JOHN KARIMI NGOMBEINI 1ST CITEE

JOSEPH KARURI MWANIKI 2ND CITEE

JOSPAT MURIUKI NJOKA 3RD CITEE

JAMES NYAMU MWANIKI 4TH CITEE

RULING

1. The Court has considered the following principles applicable to this ruling on citation.
2. The grandchildren of a deceased person can any petition for Letters of Administration of the Deceased's estate where there are no surviving spouse and children of the deceased or other persons in priority.
3. The grandchildren of a deceased person can where their parents are deceased children inherit form the estate of their grandfather directly, in terms of sections and 39 and 41 of the Law of Succession Act and, for that purpose, to apply in the estate of their grandparents for inheritance on behalf of their parents who are deceased.
4. The applicants in this case who are children of a deceased child of the deceased are required to obtain letters of administration of their deceased mother. See Cleopha Amutala Namayi v. Judith Were (2015) eKLR (Mrima, J.) and Re Estate of John Kihara Njau Alias Kihara John (Deceased) [2021] eKLR, cited by the Citees.



5. The Court is aware of dicta that the grandchildren have no need to file for administration of the estate of their deceased parents before being able to seek to inherit the share of the deceased 's estate coming to their deceased parent. See (Musyoka, J) in Kakamega Succession Cause No. 661 of 2015 In the Matter of the Estate of Imoli Luhitse Paul (Deceased), where the Court ruled as follows:

“2. I held in *In re Estate of Veronica Njoki Wakagoto (Deceased)* [2013] eKLR (Musyoka J), that a grandchild of the deceased was not entitled directly to the estate of their late grandfather in intestacy, so long as their own parents, being children of the deceased, were alive and were taking their rightful share. The argument was that such a grandchild would take indirectly through her own parents. I went on to state that a grandchild would be entitled to inherit directly from the intestate of their grandparent where his or her own parent, the child of the deceased, was dead, and, therefore, not available to take their share directly. In such case, the grandchild would be entitled to take directly by virtue of section 41 of the *Law of Succession Act*, Cap 160, Laws of Kenya. In *In re Estate of Florence Mukami Kinyua (Deceased)* [2018] eKLR (T. Matheka J), the court pronounced a grandchild to be a direct heir to the intestate estate of their grandparent, where his or her own parents have predeceased the grandparent, or, should I add, the parent dies before the estate is distributed. The court asserted that such a grandchild steps into the shoes of the deceased parent so as to take the share that such parent would have taken from the estate of the grandparent's estate. See also *Cleopa Amutala Namayi vs. Judith Were* [2015] eKLR (Mrima J).

3. In the instant case, the applicant, in the summons for revocation of grant, is a child of a dead son of the deceased herein. The applicant is claiming directly by dint of *In re Estate of Veronica Njoki Wakagoto (Deceased)* [2013] eKLR (Musyoka J) and *In re Estate of Florence Mukami Kinyua (Deceased)* [2018] eKLR (T. Matheka J), and does not require to take out letters of administration to intervene in the estate of her late grandfather, where her own parents are dead. Secondly, apart from case law, the provisions of the *Law of Succession Act* cover these situations. Section 39 of the *Law of Succession Act* makes grandchildren heirs in intestacy, where their own parents, who are biological children of the deceased, are dead. Section 41 of the *Law of Succession Act* is the provision that enables grandchildren to step into the shoes, of their own parents, and to step into those shoes they need not take out letters of administration.

4. I believe that there is a misconception. Grandchildren are not in the same footing with the daughters-in-law or children-in-law of the deceased. Grandchildren would be blood relatives of the deceased. They would be entitled automatically, as blood kin of their grandparent, to take the share due to their own parents, the biological children of the deceased, where such biological children are dead. A surviving spouse of a dead child of the deceased is not a biological kin of the deceased parent-in-law. Such a child-in-law would have no automatic right or entitlement to a share in the estate of her parent-in-law. Whereas statute is clear that grandchildren have a right under sections 39 and 41 of the *Law of Succession Act*, there is not a single provision in the *Law of Succession Act*, or any other statute for that matter, which makes provision



for any in-law. Consequently, since in-laws have no rights of inheritance from the estates of their in-laws, they can only approach the court upon obtaining representation to the estates of the persons on whose account they claim. Their claim to a stake in the estate of the parent-in-law would not be in their own right, but rather on behalf of the estate of another, their dead spouse. They can only stake a direct claim to the estate of their late spouse, whose assets include what the dead spouse inherits from the estate of their parents. I must emphasize that grandchildren are not in that boat with such in-laws, and they claim from their grandparent's estate, not on behalf of their dead parents, but directly as grandchildren, children of such dead children, the share that ought to have gone to their parents."

6. However, this Court takes the view that for good order and so that the Court is confident that the applicant grandchildren who seek to pursue, secure and inherit the share going to their deceased parent with the authority of any other children of the deceased parent, the grant of letters of administration to the estate of their deceased parent is essential.
7. As the letters of administration take effect from the date of Grant, it would follow that the applicants would have no standing to file the application before the grant of the letter of administration.
8. On the merits, even if it were considered that the applicants bring the application in their own interest as the children of the deceased child of the Deceased herein, the presence of the Deceased's children the respondent herein means that the scenario which would entitle them to bring the application of grant of letter of administration to the estate of their grandfather has not arisen as there are children of the Deceased who rank in priority in accordance with section 66 of the *Law of Succession Act*.
9. Consequently, however the court looks into the matter, the citation in this case does not have merit and it will be dismissed.
10. The issues of signature by the Deputy registrar and the want of a Chief's Letter introducing the applicant Citors are matters that can be rectified and cured by supplemental filing and cannot be fatal to an application/citation, under Rule 22 (1) of the Probate and Administration Rules, to take out letters of Administration where the applicants are seeking leave of court to commence proceedings if the person in priority do not accept to take out the letters of administration.
11. The Court finds that the applicant has no locus standi as grandchildren to bring the application for grant of letter of administration to the estate of their grandfather there being alive children of the deceased who rank in higher priority on the degree of consanguinity. See section 66 (b) of the *Law of Succession Act*.
12. The Court commends the elaborate submissions of the advocate for the Citees dated 23/5/25. The Citors did not file submissions on the matter.

Orders:

13. Accordingly, for the reasons mentioned above, the citation dated 11/7/2024 is dismissed.
14. There shall be no orders as to costs.

Orders accordingly.

DATED AND DELIVERED THIS 28TH DAY OF OCTOBER 2025.

EDWARD M. MURIITHI



JUDGE

Appearances:

Ms. Muturi for Mr. Magee for the Citees.

Ms. Nekoye for Citors.

