



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Joseph Wanjohi Ndirangu (Deceased) (Succession Cause E056 of 2025) [2025] KEHC 15291 (KLR) (30 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15291 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE E056 OF 2025**

DKN MAGARE, J

OCTOBER 30, 2025

IN THE MATTER OF THE ESTATE OF JOSEPH WANJOHI NDIRANGU [DECEASED]

IN THE MATTER OF

EUNICE NJERI WANJOHI PETITIONER

RULING

1. This file was brought to my attention by the Deputy Registrar. There is a letter addressed to the Deputy Registrar regarding the legality of proceedings in the lower court under Article 165(6) of *the Constitution*. The same provides as follows:

“6. The high court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising judicial or quasi-judicial function, but not over a superior court”.

2. The letter seeks the following directions:

1. Whether the Petitioner Eunice Njeri Wanjohi should be registered as having a life interest with two children Margaret Nyambura Wanjohi and Paul Ndirangu Wanjohi as per summons for confirmation dated 25.06.2024.
2. Whether the Rectified Certificate of confirmed grant dated 9.6.2025 should be rectified accordingly.
3. For avoidance of doubt, the powers are exercisable sparingly and appropriate directions are given. The exercise is provided under Article 165(7) as follows:

“For purpose of clause (6), the high court may call for the record and proceedings before subordinate court or person, body or authority referred to in clause (6) and



may make any order or give any direction it considers appropriate to ensure fair administration of justice.”

4. The overriding basis of the orders under Article 165(7) is to ensure fair administration of justice. This then brings me to the question; what is fair administration of justice? The guide for these are principles set out in Article 159(2) of *the Constitution*, in particular (a) (b) (c) and (e) thereof. The said article provides as follows:

2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles:

(a) justice shall be done to all, irrespective of status;

(b) justice shall not be delayed;

(c)

(d) justice shall be administered without undue regard to procedural technicalities; and

(e) the purpose and principles of this Constitution shall be protected and promoted.

5. These principles have been developed and interpreted that the court must have a holistic approach to interpretation of *the constitution*. The overriding objective principle has been interpreted widely by our courts. In the case of Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [2013] KECA 208 (KLR), the court of appeal[Githinji, Nambuye & Koome JJ.A], as then they all were, addressed the overriding principles in the in civil litigation as applying in appeals as follow:

The principle confers on the courts considerable latitude in the exercise of its discretion in the interpretation of the law and rules made there under. (See the case of City Chemist (NB1) Mohamed Kasabuli suing for and on behalf of the Estate of Halima Wamukoya kasabuli versus Orient Commercial Bank Limited Civil Application No. Nai 302 of 2008 (UR.199/2008); The aim of the overriding objective principle is to enable the Court achieve fair, just, speedy, proportionate, time and cost saving disposal of cases before it. (See the case of Kariuki Network Limited & Another versus Daly & Figgis Advocates Civil Application No. Nai 293 of 2009); that the application of the overriding objective principle does not operate to uproot established principles and procedures but to embolden the court to be guided by a broad sence of justice and fairness (See the case of Kariuki (Supra); that in applying or interpreting the law or rules made there under, the Court is under a duty to ensure that the application or interpretation being given to any rule will facilitate the just, expeditious, proportionate and affordable resolution of appeals (See the case of Deepakc Manlal Kamami and another versus Kenya Anti-Corruption and 3 others Civil Application No. 152 of 2009); that there is a mandatory requirement that the Court of Appeal rules of procedure should also be construed in a manner which facilitates the just, expeditious, proportionate or affordable resolution of appeals. (See the case of Dorcas Indombi Wasike versus Benson Wamalwa Eldoret Civil Application No. 87 of 2004); that the overriding objective principle is intended to re-energize the process of the court, encourage good management of cases and appeals, and ensure that interpretation of any of the provisions.

6. Fair administration of justice requires that both procedural fairness and substantive justice should not be curtailed. The applicant faces a singular problem of not having a respondent to file an appeal against. The court cannot just throw up its hands. In exercising the powers under Article 165(7). The court must guard against exercising appellate jurisdiction over the decision of the court or substituting the lower court discretion with its own discretion.



7. Fair administration of justice includes respecting rules of natural justice. The Administrator made an application dated 27/2/2025. They sought to remove life interest placed on the children of the deceased and retain the same on the mother. This was after the applicant had informally written to court to correct the question of life interest. The court thereafter removed the beneficiaries and left only Eunice Njeri Wanjohi, the Applicant, without the children.
8. She has moved the court again under its supervisory jurisdiction. The court below directed that life interest cannot be shared and referred to Section 35 of the Law of Succession. The scenario left parties without a dispute but without their prayers. The grant issued to her cannot be effected since a life interest cannot be registered without the substantive beneficiaries. Section 35 of the [Law of Succession Act](#) provides as follows:
- (1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to-
 - (a) the personal and household effects of the deceased absolutely; and
 - (b) a life interest in the whole residue of the net intestate estate:

Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.
 - (2) A surviving spouse shall, during the continuation of the 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 immediate 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.
 - (4) Where an application is made under subsection (3), the court shall have power to award the applicant a share of the capital of the net intestate estate with or without variation of any appointment already made, and in determining whether an order shall be made, and if so what order, shall have regard to- the nature and amount of the deceased's property;

any past, present or future capital or income from any source of the applicant and of the surviving spouse;
 - (c) the existing and future means and needs of the applicant and the surviving spouse;
 - (d) whether the deceased had made any advancement or other gift to the applicant during his lifetime or by will;
 - (e) the conduct of the applicant in relation to the deceased and to the surviving spouse;
 - (f) the situation and circumstances of any other person who has any vested or contingent interest in the net intestate estate of the deceased or as a beneficiary under his will (if any); and
 - (g) the general circumstances of the case including the surviving spouse's reasons for withholding or exercising the power in the manner in which he or she did, and any other application made under this section.
 - (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 the death, or, in the case



of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.

9. There was a proposal for one to hold in trust of others. Unfortunately that was in the agreement between beneficiaries. The court's supervisory jurisdiction was invoked so that, the interest of the parties can be taken care of. After perusing the file I note the following:
 - i. The deceased died intestate.
 - ii. He left behind 4 beneficiaries, that is:
 - a. Eunice Njeri Wanjohi – Widow
 - b. Margaret Nyambura Wanjohi – Daughter
 - c. Agnes Wairimu Wanjohi – Daughter
 - d. Paul Ndirangu Wanjohi – Son
10. Of the four beneficiaries, one is a horizontal dependent, namely the widow, who holds a life interest as contemplated under Section 35 of the *Law of Succession Act*. By virtue of that provision, the widow's interest in the estate is distinct from that of the children, who stand as the ultimate beneficiaries. The operative provision is Section 35(5) of the Act, which stipulates that upon the death of the surviving spouse, the property shall devolve upon the surviving child, if there be only one, or be equally divided among the surviving children. It therefore follows that the completion of the succession process cannot be deferred indefinitely to await remarriage or death, as the devolution of the estate is already guided by statute.
11. Secondly, by placing a life interest on children, when they die, their share cannot devolve by will. This essentially creates what the law describes as joint tenants as opposed to tenants in common. Both these terms are provided under the *land act*.
12. Section 2 of the *Land Act* provides as follows:

Joint tenancy means a form of concurrent ownership of land where two or more persons each possess the land simultaneously and have undivided interest in the land under which upon the death of one owner it is transferred to the surviving owner or owners;

tenancy in common means a form of concurrent ownership of land in which two or more persons possess the land simultaneously where each person holds an individual, undivided interest in the property and each party has the right to alienate, or transfer their interest.
13. Therefore, by disinheriting the dependents and placing their interests as subservient, the court below made an illegality that cannot be enforced. Unfortunately, the error has no origin from court. It was generated from the applicant's summons for confirmation.
14. The summons for confirmation of grant of letters of administration intestate was dated 25/6/2025. In the course of those proceedings, one of the beneficiaries, Agnes Wairimu Wanjohi (a daughter), appeared to have been excluded, and the record does not disclose the reason for her omission.
15. The Applicant sought that the sole asset of the estate, being Land Parcel No. Mweiga/Kamatongu Block 9/Kamweru/45, be registered in the names of Margaret Nyambura, Paul Ndirangu Wanjohi, and Eunice Njeri, the latter to hold a life interest therein. The application was allowed. However, it has since emerged that the parties are not in agreement with the court's understanding of their initial prayer. The applicant seeks to walk away from their application and have invoked the court's powers.



16. Upon perusal of the record, I note that there exists a lexical ambiguity which appears to have given rise to multiple applications. It is therefore imperative that the record be corrected to accurately reflect the rightful beneficiaries and the nature of their respective interests. I further observe that, although all the children were present in court, there is no indication as to the *raison d'être* or justification for the exclusion of one of the declared children from the distribution.
17. Upon perusing the file together with the notes of the trial court and the Deputy Registrar, yesterday, I directed that the lower court file be transferred to this court for determination, in view of the unique issues it raises. The unique aspect of the matter is that, although all parties were in agreement, they were nonetheless they were raising questions on the legality of the decision of the trial court. However, there was no identifiable Respondent against whom an appeal could properly be lodged.

Determination

18. Upon considering the law and *the constitution*, I make the following orders:
 - a. The confirmed grant be revoked.
 - b. A grant be re-issued to the same administrator. The new grant be confirmed as follows:
 - a. The children of the deceased to share the Land Parcel Number Mweiga/Kamatongu Block 9/Kamweru/45, equally. For avoidance of doubt the children are:
 - b. The children of the deceased, namely Margaret Nyambura Wanjohi, Agnes Wairimu Wanjohi and Paul Ndirangu Wanjohi shall share the Land Parcel Number Land Parcel Number Mweiga/Kamatongu Block 9/Kamweru/45, equally.
 - c. The deceased's widow, Eunice Njeri Wanjohi, shall have life interest on the said Land Parcel Number Mweiga/Kamatongu Block 9/Kamweru/45.
 - d. Upon the demise or remarriage of Eunice Njeri Wanjohi, the life interest on the Land Parcel Number Mweiga/Kamatongu Block 9/Kamweru/45, shall terminate.
 - e. The grant be transmitted within 6 months, that is, by 30.04.2026
 - f. The file is closed.

**DELIVERED, DATED AND SIGNED AT NYERI, THIS 30TH THE DAY OF OCTOBER, 2025.
RULING DELIVERED VIDE THE CTS, EX TEMPORE.**

KIZITO MAGARE

JUDGE

Represented by:

M/s S Gathiga Mwangi for the Petitioners

