



REPUBLIC OF KENYA



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

**In re Estate of Charles Kairu Njuguna alias Njuguna Charles  
Kairu alias Charles K. Njuguna (Deceased) (Succession Cause  
E008 of 2023) [2025] KEHC 14944 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14944 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE E008 OF 2023  
MA ODERO, J  
OCTOBER 24, 2025**

**IN THE MATTER OF THE ESTATE OF CHARLES KAIRU NJUGUNA ALIAS  
NJUGUNA CHARLES KAIRU ALIAS CHARLES K. NJUGUNA (DECEASED)**

**RULING**

1. Before this Court is the Notice of Motion dated 17<sup>th</sup> August 2024 by which the Applicant John Muturi Muthoni seeks the following orders:-
  - “ 1. That an order do issue for the exhumation of the body of the deceased herein Charles Kairu Njuguna who died on 02/02/2023 from his grave on LR No. 340x/xx.
  2. That the interested Part herein and such other medical practitioner as the interested party will deem necessary do extract body materials from the remains of the body of the deceased herein and from the Applicant herein for purpose of conducting a DNA sampling for DNA paternity.
  3. That the interested party herein do supervise the exhumation and reburial of the body of the deceased herein.
  4. That the interested party herein do file in court the report of the DNA paternity test pursuant to prayer (2) above.
  5. That the costs of this Application be provided for.”
2. The application which was premised upon Sections 1A, 1B and 3A of the *Civil Procedure Act*, Section 146 of the *Public Health Act* (Cap 242) and all the enabling provisions of law was supported by the Affidavit of even date sworn by the Applicant.
3. The Respondent Mary Nyakeru Kairu and Francis Gatonga Kairu opposed the application through the Replying Affidavit dated 9<sup>th</sup> December 2024 sworn by the 2<sup>nd</sup> Respondent.



4. The application was canvassed by way of written submissions. The Applicant filed the written submissions dated 13<sup>th</sup> May 2025 whilst the Respondents relied upon their written submissions dated 27<sup>th</sup> June 2025.

### **Background**

5. This succession cause relates to the estate of the late Charles Kairu Njuguna (hereinafter ‘the Deceased’) who died intestate on 2<sup>nd</sup> February 2023. A copy of the Death Certificate Serial No. 15xxxxx was filed in court on 17<sup>th</sup> April 2023.
6. Following the demise of the Deceased Grant of letters of Administration Intestate were on 19<sup>th</sup> June 2023 issued to the two Respondents. Mary Nyakeru and Francis Gatonga Kairu. The Applicant filed an Affidavit of Protest dated 18<sup>th</sup> September 2023 which protest was later withdrawn vide the Notice of withdrawal dated 26<sup>th</sup> February 2024.
7. The Respondents then filed a Summons for confirmation of Grant dated 26<sup>th</sup> January 2024. The court gave directions for hearing of the Applicants objection. However before the hearing could commence the Applicant filed this present application seeking exhumation of the body of the Deceased for purposes of DNA testing.
8. The Respondents vehemently opposed the application.

### **Analysis and Determination**

9. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties.
10. The applicant seeks orders for exhumation of the body of the Deceased in order to obtain samples for DNA testing. An order for exhumation of a dead body will of necessity involve some level of desecration of a grave and will undoubtedly cause distress to the bereaved family. As such an order for exhumation is not one that can be made casually or without proper legal basis. The Applicant must first establish a *prima facie* case to warrant the issuance of such an order.
11. In the case of *DNM -VS- K* [2016] eKLR the court observed as follows:-

“ Even though the courts core role is to determine disputes, the courts often deploy methods of compulsion not necessarily to get to the truth but to help determine disputes fairly. It is thus common to see witnesses being summoned and also compelled at the risk of jail to answer questions. In all instances though, the party seeking the court’s assistance must lay a firm and factual foundation for his case. It is not different where DNA testing is sought. In the case of DNA testing the basis must be laid even where a child is involved as ordering DNA testing is not a mere procedural matter but is substantive enough given that an individual’s constitutional rights may be limited through such testing.” [Own emphasis]
12. In the same case the same court went on to hold that:-

“ The bid to establish the truth through scientific proof must however not be generalized and should never so lightly prevail over the right to bodily integrity and right to privacy until it is clear that such rights ought to be limited. The clarity is only established where an undoubted nexus is shown as well as a specified quest to protect or enforce specific rights. Untested and controverted affidavits may not suffice.”



13. The Applicant claims that he is a son to the Deceased. He claims that the Deceased and his mother had cohabited in Nyeri from 1982 to 1985 and that out of their relationship a child (himself) was born. In order to merit the orders of exhumation, the Applicant must satisfy this court firstly that his mother did indeed cohabit with the Deceased as he alleges or at the very least the Applicant must adduce evidence of an intimate relationship between his mother and the Deceased.
14. Secondly the Applicant must prove that the Deceased during his lifetime recognized him as a son. No evidence to prove the above elements has been adduced by the Applicant. Affidavit alone will not suffice. Therefore I do agree with the Respondents that this application for exhumation is premature.
15. The proper course of action in my view is for the Applicant to prosecute his summons for revocation of Grant or an objection to the summons for confirmation of Grant. During that hearing any evidence adduced by the Applicant in support of his claims can be tested by way of cross-examination. It is only when and if the court is persuaded that a *prima facie* case has been established that the application for exhumation can be considered.
16. Finally I find no merit in this application. As stated earlier the same is premature. Accordingly I dismiss the Notice of Motion dated 17<sup>th</sup> August 2024 entirely. Costs of this application to be borne by the Applicant.

**DATED IN NYERI THIS 24<sup>TH</sup> DAY OF OCTOBER 2025.**

.....

**MAUREEN A. ODERO**

**JUDGE**

