



**In re Estate of George Thuo Njuguna - Deceased (Succession Cause  
825 of 2011) [2025] KEHC 14971 (KLR) (Family) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14971 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 825 OF 2011  
CJ KENDAGOR, J  
OCTOBER 24, 2025  
IN THE MATTER OF ESTATE OF GEORGE THUO NJUGUNA - DECEASED**

**RULING**

1. The deceased, George Thuo Njuguna, died on the 15th June, 2010. Agrippina Wangari Thuo and George Thuo Njuguna petitioned this Court for a Grant of Probate with Written Will dated 3<sup>rd</sup> June, 1996. An objection to the making of the Grant was lodged on the grounds that the Will is a forgery.
2. On 4<sup>th</sup> November, 2013, the Court directed that the dispute over the validity of the Will be determined through viva voce evidence.
3. The primary issue for consideration in this ruling is the validity of the Will.
4. There is currently no original copy of the Will dated 3<sup>rd</sup> June, 1996.
5. The validity of the copy was under scrutiny during a trial at the Thika Chief Magistrates' Court in Criminal Case No. 4948 of 2016. In that case, five individuals, including Agrippina Wangari Thuo, George Thuo Njuguna, Francis Njuguna Thuo, Nicodemus Gatoho Thuo, and Mary Nyokabi Kihato, all of whom are involved in the Succession Cause, were jointly charged with six offences under the Penal Code of forgery of Will, uttering a false document, making a false document, demanding property upon forged testamentary instrument, conspiracy to commit a felony and intent to defraud.
6. The trial Court found that the prosecution had not established a prima facie case against the accused persons, and they were acquitted under Section 210 of the Criminal Procedure Code. In the appeal by the Director of Public Prosecutions (High Court, Kiambu Criminal Appeal No. 40 of 2018), the appellate Court upheld the trial Court's decision, finding no evidence linking the accused to the forgery.
7. At the hearing before the Succession Cause, the petitioners called two witnesses. Their evidence related to the preparation and execution of the will.



8. PW1, G. Kibara, an Advocate of the High Court of Kenya, testified in Court that he prepared the Will at the request of Advocate C.K. Mwihiya, who was his employer and was a close friend of the deceased. He stated that he held several meetings with the deceased at his home, during which they reviewed multiple drafts of the Will that was ultimately finalized and retained by the deceased.
9. He told the Court that he witnessed the Will and confirmed that the signatures on the last page were his, along with those of the other witness and the deceased. PW1 acknowledged that the signatures were not appended to all the pages and also stated that the deceased's secretary made additions to the Will, as several properties were included over time.
10. PW2, D.N. Njoka, told the Court that he witnessed the Will. Contrary to PW1's testimony that the signatures were appended in the presence of all three (PW1, PW2, and the deceased), PW2 stated that he witnessed the Will at the deceased's office and was alone with the deceased at the time.
11. PW2 stated that he did not read the contents of the Will but confirmed that the signature on the copy is his. He also testified that, since he managed some of the deceased's properties and was a close friend of the deceased, he was called when the deceased's safe was opened, and he recorded the minutes outlining its contents, which he said included asset documents and the Will.
12. Parties prepared submissions, which I have duly considered.

### **Analysis and Determination**

13. From the pleadings, the evidence adduced, as well as the submissions of the counsel, the issue for determination is whether the Will dated 3<sup>rd</sup> June, 1996 is valid.
14. The formal requirements of validity of a written Will are stipulated in Section 11 of the *Law of Succession Act* as below;

“No written Will shall be valid unless-

- (a) The testator has signed or affixed his mark to the Will, or it has been signed by some other person in the presence and by the direction of the testator;
  - (b) The signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a Will;
  - (c) The Will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the Will, or have seen some other person sign the Will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of that other person; and each of the witnesses must sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”
15. The document referenced as the Will is a copy; it is not clear where the original is. This Court has examined the Will; page one is referenced as a Will, and it also contains the name of the deceased. On page six, it has a signature on the name of the deceased as the testator and the two witnesses (PW1 and PW2).



16. The testator did not suffer from any mental incapacity during his lifetime. The two witnesses confirm that the signatures on the Will are theirs. However, aside from the issue of form, the Court must also consider other circumstances when determining its validity.
17. Section 5(3) of the [Law of Succession Act](#) and Rule 7(5) of the Probate and Administration Rules require that in cases of testacy, the original Will ought to be filed simultaneously with the petition for Probate or of Letters of Administration with Will annexed.
18. The Petitioners assert that what was submitted was an original document; however, the Court cannot confirm with certainty that an original ever existed. The protocols followed by the Court for releasing the document to the DCI for examination were questioned, but the DCI reports indicate that what was received was a copy.
19. The reports are comprehensive, and it can also be inferred that the ODPP paid close attention to the matter, both in the prosecution and in pursuing an appeal following the lower court's decision.
20. I have no reason to doubt the integrity of the Court file, as no grant was issued after the petition was filed. I cannot definitively state that approval was given pursuant to the deposit of an original will at the time of filing. Since the introduction of registry manuals, the judiciary has implemented checklists and file-minuting practices when requests are made for the release of documents, which should be emphasized to prevent incidents like the current allegations.
21. While PW1 asserts that there was a counterpart of the Will at the time of signing, these counterparts were never secured for production.
22. Additionally, PW2's evidence that a Will was in the safe is unsubstantiated by the document (minutes) supposedly derived from handwritten notes, which were not even produced. There is no indication of an envelope containing the alleged Will. In fact, this document includes paragraphs that appear to investigate the assets; some question marks (?) and the word 'missing' do not suggest an inventory list.
23. To exacerbate the situation, while both witnesses affirm that the signatures on the copy of the Will undeniably belong to them, they could not speak with certainty about the actual contents of the Will. PW1 stated that there were many insertions made by the deceased's secretary, and he could not identify what had been added.
24. Additionally, the document contained different fonts, which cannot be overlooked, even with the explanation regarding the use of typewriters. Who made the additional handwritten overwriting? Is it possible that pages were inserted or that the document was manipulated?
25. Furthermore, the witnesses were unable to confirm whether the copy accurately reflects what was present in the original document they observed. Another point of doubt arises from the conflicting testimony regarding the execution of the Will. PW1 claimed it was executed at the deceased's house and in the presence of three individuals, while PW2 stated that it took place at the deceased's office, and that PW1 was not present.
26. The deceased left behind a vast estate. PW1 depicted the preparation of the deceased's Will and the chain of custody in a rather casual and informal manner. However, it's essential to recognize that a Will is a significantly important document that embodies the wishes and intentions of an individual. It is sacred in nature and should be approached with the highest level of seriousness. Every step in its creation and handling must be meticulously conducted to ensure that its integrity is preserved.



27. The chain of custody for a Will is of paramount importance. It serves to ensure that the Will remains unaltered, thereby safeguarding its authenticity. An unclear chain of custody can cast doubt on the integrity of the Will, raising concerns about the potential tampering with the deceased's true wishes.
28. This Court also takes cognisance that both the trial Court's findings in the criminal case and the appellate Court acknowledged forgery, despite the acquittal of the accused.
29. All the factors outlined above raise doubts about the authenticity of the Will.
30. Consequently, the Will dated 3<sup>rd</sup> June, 1996 is declared invalid and incapable of execution. The estate of the Late George Thuo Njuguna shall be administered as intestate.
31. Each party to bear its own costs
32. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 24<sup>TH</sup> DAY OF OCTOBER, 2025.**

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**C. KENDAGOR**

**JUDGE**

In the presence of:

Court Assistant: Beryl

Mr. Gathu Advocate for Mathew Thuo

Mr. Wachira holding brief for Kanyi Advocate for Mary Thuo

Mr. Kago Advocate for Samuel and Paul Thuo

Mrs. Wambugu for Ruth Mbugua

Mrs. Ndungu Advocate for George and Francis Thuo

Ms. Okeyo Advocate holding brief for Nzakyo Advocate for Michael Kinuthia

Ms. Auma Advocate holding brief for Jumba Advocate for Mercy Wanjiru Nganga

