



REPUBLIC OF KENYA



In re Estate of John Godhard Ichahuria Mburu (Deceased) (Succession Cause 494 of 1982) [2025] KEHC 15936 (KLR) (Family) (7 November 2025) (Ruling)

Neutral citation: [2025] KEHC 15936 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 494 OF 1982
PM NYAUNDI, J
NOVEMBER 7, 2025
IN THE MATTER OF THE ESTATE OF JOHN
GODHARD ICHAHURIA MBURU (DECEASED).

RULING

1. Before this court is the Notice of Motion dated 18th December 2024 filed by Joseph Kangethe Wanyoike (the applicant). It seeks the following orders;
 1. Spent.
 2. That the applicant, Joseph Kangethe Wanyoike, be joined as an interested party in this matter.
 3. That the applicant be appointed as one of the administrators of the estate of the late John Godhard Mburu (Deceased).
 4. That the applicant's interest as the sole beneficiary of the estate of the late Carmelina Ngami Mburu (deceased), a listed beneficiary of John Godhard Mburu's estate, be recognized.
 5. Spent.
 6. That costs of this application be provided for.
2. The application is premised upon Section 44 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules and was supported by the Affidavit of even date sworn by the intended interested party, Joseph Kangethe Wanyoike.
3. The application is opposed. Louisa Wanjira Mburu, Respondent/Administrator who filed a Replying Affidavit sworn on 2nd May 2025.
4. It is the applicant's case that he is the administrator of the estate of the late Carmelina Ngami Mburu who was the deceased's wife. He was issued with letters of administration ad litem in Probate Cause



- No. 1043 of 2018. He argues that the deceased's late wife is entitled to the deceased's estate which devolves to him as the sole beneficiary.
5. That the estate of Carmelina Ngami Mburu has been excluded from the proposed mode of distribution in this matter. He avers that he is willing and able to act as an administrator to safeguard the interests of other beneficiaries and ensure compliance of law.
 6. He argued that the application is in the best interest of justice and is meant to protect the estate of Carmelina Ngami Mburu from prejudice and to ensure her lawful entitlement is not wasted.
 7. The Respondent's case is that she is a co-administrator and beneficiary of the estate of the deceased. She avers that the applicant has not been issued with letters of administration and therefore, lacks locus standi to institute the application. It was her argument that the prayer for joinder cannot be granted because there are no parties in a probate cause. That a probate cause is not a suit in the same vein as envisaged in the *Civil Procedure Act* and the Civil Procedure Rules 2010. She argued that the application is fatally defective because the grant ad litem presented before this court is for purposes of filing a suit but not for filing an interlocutory application within a probate cause.
 8. It was her argument that the applicant has no interest in the deceased's estate as he is not a beneficiary, a spouse, a child nor creditor to the estate. She is aware that Carmelina was the deceased's wife. Upon her death, the applicant and Lewis Wanyoike Kang'ethe instituted Succession Cause No. 1493 of 2018 in respect to the estate of Carmelina Ngami Mburu. As administrators of the Estate of John Godhard Ichahuria Mburu they filed an application for objection of the grant dated 18th November 2023 on the ground that the petitioners had included assets of the estate of John Godhard Ichahuria Mburu as part of the estate of Carmelina Ngami Mburu.
 9. The validity of the will was also challenged. She argued that the applicant's application is centered on the fact that he is a beneficiary of the estate of Carmelina Ngami Mburu and not the estate of the deceased herein. It was her argument that Carmelina Ngami Mburu had a life interest in the deceased's estate but the same was extinguished when she died. she asked the court to dismiss the application with costs.

Proposed Interested Party's Submissions.

10. The Proposed Interested Party's submissions are dated 1st August 2025. He framed three issues to be determined by this court:
 - i. Whether the applicant has locus standi.
 - ii. Whether Carmelina Ngami Mburu (Deceased) has an interest in the Estate of John Godhard Mburu.
 - iii. Who are the proper administrators of the Estate of John Godhard Mburu.
11. On the first issue, it was his submission that the grant ad litem authorizes him to represent Carmelina in any legal proceedings including these proceedings. That the argument that a full grant should be issued does not stand because he has petitioned for a full grant in HC P&A 1493 of 2018 where the administrators are objecting to him being issued with a grant. It was his submission that this court under Article 159 of *the Constitution* is enjoined to do justice by allowing the application as prayed so as to avoid locking out the estate of the late Carmelina Ngami Mburu.
12. On the second issue, it was his submission that the deceased did not have a biological child with Carmelina (he pre-deceased her), these proceedings shall be governed by Section 39 of the *Law of Succession Act*. It was his submission that since Carmelina did not remarry, she is still entitled to the



deceased's estate under Section 36 (1) of the [Law of Succession Act](#). Being the legal representative of her estate, he is entitled to participate in these proceedings.

13. On the last issue, it was his submission that Louisa Wanjira Mburu, Betty Wanjiru Njoroge and John Gichu and other beneficiaries are not the deceased's (Carmelina Ngami Mburu) biological children and are not close on proximity to her. He argued that being the legal representative of the estate of Carmelina Ngami Mburu, he should be appointed as an administrator of the deceased's herein estate.

Administrators' Submissions

14. The Administrators submissions are dated 8th July 2025. The Administrators framed the following as issues to be determined by this court:
 - i. Whether the applicant can be admitted as an interested party in the probate cause.
 - ii. Whether the applicant can be appointed as an administrator to the Estate of the late John Godhard Ichahuria Mburu.
 - iii. Who should bear costs of the suit.
15. On the first issue, relying on the decision of *Karago t/a Apiclamed Limited v Sige & another; Apiclamed Limited (Interested Party) (Succession Cause 56 of 2012) [2024] KEHC 3536 (KLR)*, it was submitted that the proposed interested party does not meet the threshold to be admitted as an interested party because he is neither a beneficiary, a child, a creditor nor a spouse of the deceased. According to them, the proposed interested party is a stranger to the estate. It was further submitted that unlike civil matters, there is no joinder of interested parties in a probate cause. Reliance was placed on the decision of *In re Estate of David Aura Wesonga (Deceased) (Succession Cause 257 of 2012) [[2023] KEHC 2022 (KLR)*. They argue that the proposed interested party's application is an attempt to delay the finalization of the matter which has been in court for over forty years.
16. On the second issue, it was their submission that the proposed interested party does not meet the requirements to be appointed as administrator of the deceased's estate under Section 66 of the [Law of Succession Act](#). As the deceased's children have a superior rights over him to administer the deceased's estate. Reliance was placed on the decision of *In re Estate of Dorcas Omena Binayo (Deceased) [2021] KEHC 8338 (KLR)*.
17. On the issue of costs, they urged the court to award them costs on a higher scale.

Analysis And Determination.

18. Having considered the pleadings and submissions filed herein alongside the relevant law, the following are the issues for determination
 - a. Whether the applicant ought to be joined as an interested party in the cause
 - b. Whether the applicant should be admitted as an administrator of the estate of the deceased
 - c. Whether the applicant is a beneficiary in the estate of the deceased herein?
 - d. Who should bear costs of the suit.
19. The applicant in seeking to be joined as an interested party presents this application under Section 44 of the [Law of Succession Act](#) and rule 73 of the Probate and Administration rules.
20. Section 44 of the [Law of Succession Act](#) provides-



Part VII – Administration Of Estates

44. Application of Part

- (1) The provisions of this Part shall not, in cases of intestacy, apply to those types of property mentioned in section 32.
- (2) The Cabinet Secretary may, after consultation with the Chief Justice, by order in the Gazette, suspend in any area referred to in the order all or any of the sections 45, 46, 48 or 49.
- (3) Where the operation of sections 48 and 49 is suspended in any area, the High Court may make a grant of representation in respect of the estate of a deceased person whose last known place of residence was in that area, whether the value of the estate exceeds or does not exceed one hundred thousand shillings.
- (4) In this section "area" means a province, district or other part of Kenya.

21. Rule 73 of the Probate and Administration rules provides-

73. Saving of inherent powers of court

Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

22. As is evident the Law of Succession does not provide for joinder of interested parties. The law relating to joinder of parties is to governed by order 1 rule 10(2) of the Civil Procedure Rules 2010. Order 1 is not one of the provisions that is imported into the Probate proceedings by rule 63 of the Probate and Administration rules provides as follows:-

63. Application of Civil Procedure Rules and High Court (Practice and Procedure) Rules

- (1) Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Order 5, rule 2 to 34 and Orders 11, 16, 19, 26, 40, 45 and 50 (Cap. 21, Sub. Leg.), together with the High Court (Practice and Procedure) Rules (Cap. 8, Sub. Leg.), shall apply so far as relevant to proceedings under these Rules.(2)Subject to the provisions of the Act and of these Rules and of any amendments thereto the practice and procedure in all matters arising thereunder in relation to intestate and testamentary succession and the administration of estates of deceased persons shall be those existing and in force immediately prior to the coming into operation of these Rules.

23. The joinder of interested parties is therefore alien to succession proceedings, this was well articulated by Musyoka J in *In re Estate of Stone Kathuli Muinde (Deceased)* [2016] KEHC 3725 (KLR) where he reasoned thus-

[20.] Joinder of parties to a suit is concept in the ordinary civil process, where suits in the proper sense of the word are between two rival or contending sides. Other persons or entities not named as parties in the dispute may be joined, on application, to the suit if they meet certain conditions. The Civil Procedure Rules have provisions on joinder of parties, especially in Order 1 thereof. Usually a person or entity will be joined where they have complementary claims with the parties arising from the same facts.



- 21.] The probate process can be said to be a civil process only to the extent of it not being a criminal process. It is, in most respects, a process completely distinct from that governed by the Civil Procedure Act, Cap 160, Laws of Kenya, and the Civil Procedure Rules. It is regulated instead by the Law of Succession Act and the Probate and Administration Rules, which prescribes processes that are clearly removed from those intended for the ordinary civil process. In other words, the probate process is a special jurisdiction with its own processes and procedures. Such special jurisdiction and procedures are saved by section 3 of the Civil Procedure Act.
- [22.] The legislation that regulates the probate process has, however, imported into its practice certain provisions of the Civil Procedure Rules. That it has done through Rule 63 of the Probate and Administration Rules. However, the provisions of the civil process relating to joinder of parties are not among the provisions so imported under Rule 63.
- [23.] The rationale for the omission to import the said rules has something to do with the design of the probate process. Succession causes are not ordinary suits in the sense where there are two rival claimants, asserting certain rights. Rather, it is a cause designed for the sole purpose of facilitating succession to the estate of a dead person. The ultimate goal being distribution of the estate amongst the persons, if they are more than. There are no parties as such in the succession cause akin to plaintiffs and defendants, or petitioners and respondents.
- [24.] The probate process is meant to be largely administrative, where the documents lodged in the cause are scrutinized administratively by court officers before certain instruments are processed and executed by relevant judicial officers before being issued to the parties. It is intended that there be minimal court appearance. The whole process is tailored to be non-contentious, and the only contemplated court appearance is at the stage of the confirmation of the grant of representation. In that scenario then there would be no need to join any person or entity to the succession cause.
24. The reason that he seeks to be joined as a party is that he is the administrator of the estate of Carmelina Ngami (Deceased). She was a wife to the deceased herein. He desires that he be admitted into the proceedings so as to safeguard the interests of her estate. He has petitioned for Grant of Probate to her Estate in Milimani Succession Cause No. 1493 of 2018. One of the issues in contention therein are the assets that belong to the estate of Carmelina Ngami.
25. I note that at the time that Carmelina Ngami died, the grant was yet to be confirmed and the estate distributed to any of the beneficiaries. His attempt to be joined in these proceedings is therefore premature as if he is of the view that Estate of Carmelina Ngami has a stake in the estate of the deceased herein, the proper procedure is to file an affidavit of protest in response to summons for confirmation of grant. The application to be joined as an interested party therefore fails on these multiple fronts.
26. The applicant seeks to be appointed an administrator of the estate herein, since he is the administrator of the estate of Carmelina Ngami Mburu on account of Grant of letters of administration ad litem issued to him. Whereas the grant may have some utility in representing the interests of the deceased in this estate, it does not grant him a ticket to be an administrator in the estate of the deceased herein.
27. Section 66 of the Law of Succession Act is clear on individuals that have preference when it comes to appointment as administrators of the estate of the deceased. He does not fall among the list of those related to the deceased by consanguinity, neither has he laid a basis for the Court to exercise its discretion and go outside the recommended list.
28. For the above reasons, I will dismiss the notice of motion dated 18th December 2024.



29. On 27th November 2024, I directed that the Administrators file summons for confirmation of grant within 60 days. That order is yet to be complied. Therefore, administrators will file the summons within 21 days from the date hereof.
 30. Mention on 28th January 2026 to confirm compliance and take further directions
 31. Each party will bear their own costs.
 32. Leave to appeal granted. Party exercising their right of appeal to do so within 30 days
- It is so ordered

SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 7th DAY OF NOVEMBER, 2025.

P. M. NYAUNDI

HIGH COURT JUDGE

In the presence of; -

Fardosa Court Assistant

Edwin Otieno holding brief for Nzala for Administrators

Muturi for Applicant Joseph Kangethe Wanyoike

Ms. Njuguna for Public Trustee

