



In re Estate of George Sammy Eshiwani (Deceased) (Succession Cause 483 of 2015) [2025] KEHC 15808 (KLR) (6 November 2025) (Ruling)

Neutral citation: [2025] KEHC 15808 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 483 OF 2015
S MBUNGI, J
NOVEMBER 6, 2025**

IN THE MATTER OF THE ESTATE OF GEORGE SAMMY ESHIWANI (DECEASED)

IN THE MATTER OF

**THOMAS WASWA ESHIWANI 1ST APPLICANT
LORNA NYAKOWA ESHIWANI 2ND APPLICANT**

RULING

Background

1. Before this Court is a Notice of Motion dated the 2nd day of July 2025, brought by Thomas Waswa Eshiwani and Lorna Nyakowa Eshiwani, Administrators of the Estate of the late George Sammy Eshiwani, seeking, inter alia, that:
 - a. The application be heard ex parte in the first instance on account of its urgency
 - b. Equity Bank, Luanda Branch, to provide bank statements relating to the accounts that belonged to the deceased. These are; Account number XXXXXXXXXXXXX and Account number XXXXXXXXXXXXX
 - c. That Kshs. 100,000/= be withdrawn from either of the said accounts for purposes of meeting DNA testing expenses;
 - d. That the said funds be deposited in the account of the Applicants' advocates to facilitate payment of the said DNA costs;
 - e. Any other order necessary to meet the ends of justice; and
 - f. Costs of the application.
2. The application is supported by the affidavit of Thomas Waswa Eshiwani sworn on the 2nd day of July 2025.



3. The Applicants insist that by a consent recorded on 31st July 2023, the parties agreed that DNA testing be carried out between the 1st Applicant (Thomas Eshiwani) and the individuals Lorna Eshiwani, Clarence Eshiwani, Sammy Eshiwani, and Sammy Aloyo for the purpose of confirming whether the latter are beneficiaries of the Estate.
4. The costs of such DNA testing were, by consent, to be borne by the Estate.
5. It is further averred that the Applicants have been unable to access the deceased's bank accounts to confirm whether there are sufficient funds to cater for the said expenses. Attempts to obtain the co-operation of their co-administrator Doris Debora Mbalanya have been unsuccessful, prompting the present application.
6. They state that without the DNA testing, the issue of who the rightful beneficiaries are remains unresolved, thereby stalling the administration and distribution of the Estate.
7. The Applicants insist that on 3rd December 2024, when the matter came up before the high court, the court gave the following orders;
 - a. That the DNA to be conducted within 45 days after the order was issued.
 - b. That the costs thereof to be met by the administrators and later recovered from the estate.
 - c. That the respondents to file the response within 21 days
8. Subsequently, the Applicants were unable to access the deceased's bank accounts to ascertain whether sufficient funds were available to cover the DNA costs. They sought the co-operation of their co-administrator, Doris Debora Mbalanya, to execute a consent enabling them to obtain access to the accounts, but she failed to do so.
9. The Applicants now state that they are financially incapable of raising the required sum of Kshs. 100,000/=, and that their co-administrator has distanced herself from the matter. They therefore seek the Court's authority to withdraw funds from the deceased's accounts to enable compliance with the previous DNA orders.
10. They submit that it is in the interest of justice and proper administration of the estate that the tests be conducted, as the results will determine who the rightful beneficiaries are and unlock the process of distributing the estate.
11. The issue for determination is who should bear the cost of the DNA testing in the administration of the estate of the late George Sammy Eshiwani.
12. Under Section 83(e) of the *Law of Succession Act*, Cap 160 Act demands personal representatives to provide a full inventory of assets and liabilities and an account of dealings within six months of the grant of representation and confirmation of the grant.
13. Further, under Rule 73 of the Probate and Administration Rules, the Court retains inherent power to make such orders as may be necessary to meet the ends of justice or to prevent abuse of the court process. This provision gives the court the authority to compel administrators to produce the required inventory and accounts if they fail to do so.
14. The Courts have recognized that in appropriate circumstances, DNA testing is a valid means of determining heirship in succession matters. In re Estate of David Gitau Kariuki (Deceased) (Succession Cause 783 of 2007) [2025] KEHC 5247 (KLR), the court held that DNA testing is permissible where necessary to establish paternity for purposes of distribution of the estate.



15. The Court of Appeal in *BGG & Another (Civil Application) E 584 of 2023* [2024] KECA 484 (KLR) exhorted that DNA tests in circumstances as obtain in the instant matter are conducted;

“in the process of a fact-finding mission of discovering the truth. Indeed the courts would be doing a great injustice to a party who was deserving to be entitled to the estate of the deceased if the test is not conducted. It then follows that justice is better served if the test is conducted.”
16. In *re Estate of R N (Deceased)* [2018] eKLR, the High Court of Kenya addressed an inheritance dispute involving the paternity of a claimant. The court determined that the need to establish truth in such cases outweighs privacy concerns and ordered DNA testing to resolve the matter.
17. In *Re Estate of G W (Deceased)* [2021] eKLR, the High Court of Kenya affirmed that expenses reasonably and necessarily incurred by administrators in verifying the true beneficiaries of an estate, including the costs of DNA testing, are considered legitimate administrative expenses. These costs are payable from the estate's assets before distribution to the beneficiaries. The court held that such expenses are essential for ensuring the rightful beneficiaries are identified and the estate is distributed correctly according to the law.
18. Later, due to difficulties in accessing estate funds, the court on 27th November 2024 reviewed the orders and directed that the Administrators meet the DNA costs in the interim, subject to reimbursement from the Estate once funds were available.
19. This Court finds that both orders remain valid and binding. The intention of the court was clear:
 - a. That the Estate should ultimately bear the costs of the DNA testing, since the exercise is necessary for determining who the true beneficiaries are.
 - b. The Court notes that the Applicants have demonstrated genuine financial incapacity and have made reasonable efforts to comply with the orders. It is also evident that failure to conduct the DNA testing continues to stall the finalization of the succession process.
 - c. To deny them access to estate funds for this purpose would therefore be unjust and contrary to the objectives of the *Law of Succession Act*, which emphasizes the fair and efficient administration of estates.
 - d. The Court is satisfied that the use of Kshs. 100,000/= from the estate for DNA testing is a lawful administrative expense, to be accounted for appropriately.
20. Accordingly, this Court makes the following orders:
 - a. The DNA testing shall be carried out strictly in accordance with the consent order recorded on 31st July 2023 and the review order of 27th November 2024.
 - b. Equity Bank is hereby directed to avail to the Applicants, through their advocates, the bank statements of all accounts held in the name of the deceased George Sammy Eshiwani within 14 days of service of this order.
 - c. The Applicants are hereby authorized to withdraw a sum not exceeding Kenya Shillings One Hundred Thousand (Ksh 100,000) from any of the said accounts for the sole purpose of conducting the DNA testing.



- d. The said funds shall be deposited into the account of the Applicants' advocates, who shall ensure that the funds are applied exclusively to the DNA process and shall file a statement of account before this Court within 30 days of expenditure.
 - e. The costs of the DNA testing shall be borne by the Estate, consistent with the earlier orders of the lower court.
 - f. The prayer that the application be heard ex parte is spent.
 - g. Each party shall bear their own costs.
21. The Administrators are therefore directed to proceed accordingly to ensure the prompt conclusion of this succession cause.
22. Mention on 30.4.2026 to confirm compliance and for further directions.
23. Right of Appeal 30 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 6TH DAY OF NOVEMBER, 2025.

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a

Ms Juma for the Protestor present.

