

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
FAMILY DIVISION
PROBATE & ADMINISTRATION CAUSE 094 OF 2017

IN THE MATTER OF THE ESTATE OF ELIZABETH WAIRIMU WAIYAKI
(DECEASED)

LEWIS WILKINSON KIMANI WAIYAKI **1ST PETITIONER**
PETER GICHUHI WAIYAKI **2ND PETITIONER**
TIRAS BARAE WAIYAKI **3RD PETITIONER**

VERSUS

EUNICE WAMAITHA WAIYAKI **1ST OBJECTOR/RESPONDENT**
JOHN NJENGA MANGA'RA **2ND OBJECTOR /RESPONDENT**

AND

ELIZABETH WAIRIMU WAIYAKI.....**PROPOSED 1ST INTERESTED PARTY**
EDWARD WAIYAKI MANG'ARA..... **PROPOSED 2ND INTERESTED PARTY**

RULING

1. The proposed Interested Parties have filed Notice of Motion dated 19 September 2025 seeking the following orders:
 - (i) That this Honourable Court be pleased to order/direct that the Applicants/Intended Interested Parties herein be enjoined as

Interested parties in this suit and consequently file their respective pleadings;

- (ii) That the Court do give directions thereof;
- (iii) That the costs of the Application be in the cause

2. The Application is brought under sections 1A, 1B and 3A of the Civil Procedure Act, Order 51 of the Civil Procedure Rules and Rule 73 of the Probate & Administration Rules.
3. The matter concerns the estate of the Deceased. The primary dispute regarding the distribution of the estate was settled by the Judgement of this Court on 15 October 2020, in which specific properties were distributed to the beneficiaries, including a share designated for the “children of Kenneth Mang’ara Waiyaki”, a deceased son of the Deceased herein. 5 years after the judgement, the Applicants herein have emerged, asserting their status as the daughter-in-law and grandson of the Deceased, respectively, and seeking entry into the suit to agitate for their allocation.
4. In a nutshell, the Application is supported by the Affidavit of the 2nd Applicant. The core of their argument is grounded in their biological and marital connection to the Deceased. They assert that the 2020 judgement touches on properties allocated to them and their “enjoinment” is necessary to protect their interests. They aver that no prejudice will be occasioned to the Petitioners by their joinder, whereas they will suffer irreparable loss if excluded
5. The Application is vehemently opposed by the 3rd Petitioner through a Replying Affidavit sworn on 6 October 2025. The 3rd Petitioner raises fundamental preliminary objections touching on the competency of the pleadings, the *locus standi* of the Applicants, the finality of the Court’s

judgement and the specific statutory exclusions under the Law of Succession Act.

6. The 3rd Petitioner, relying on the decision in ***Re Estate of Barasa Kanenje Many* [2020] eKLR** challenges the use of the term “enjoin”. He submits that to enjoin implies the issuance of an injunction or restraint, whereas the Applicants intend “joinder”. He argues that this is not merely a semantic error but a fatal defect indicative of a misconceived application.
7. The 3rd Petitioner highlights a critical contradiction in the pleadings. The Notice of Motion names the 1st Applicant as ELIZABETH WAIRIMU WAIYAKI and describes her as a daughter in law. The Supporting Affidavit identifies her as ELIZABETH WAIRIMU MACHARIA and describes her as a grandchild (sister to the 2nd Applicant). The 3rd Petitioner submits that the Court cannot join a party whose very identity and capacity are shrouded in contradiction. The 3rd Petitioner argues that if the 1st Applicant is a daughter in law, she is excluded from the definition of dependant under section 29 of the Act.

Analysis & Determination

8. While the Court acknowledges the 3rd Petitioner’s correct citation of ***Re Estate of Barasa Kanenje Many (supra)*** regarding the distinction between enjoin and join, Article 159(2)9d) of The Constitution commands courts to administer justice without undue regard to procedural technicalities. This, however, should not be taken as an opportunity for counsel to be careless while drafting, not giving sufficient attention or thought to the pleadings they draft.
9. The contradiction between the Motion and the Affidavit regarding the 1st Applicant, however, is material. A party cannot be a daughter in law in one paragraph and a grandchild in another. This creates an ambiguity that does to the root of *locus standi*. This Court acts on certainty, not guesswork.

10. The law is clear on the issue of *locus standi*. A daughter in law is not a dependant under section 29 of the Act, as stated in the case of ***Re Francis Andachila Luta [2020] eKLR***. If the 1st Applicant is a daughter-in-law, she is a stranger to this estate. If she is a grandchild, she must prove maintenance immediately prior to the deceased's death (Section 29(b)). The Affidavit is bereft of any evidence of maintenance.
11. The Applicants seek to enforce rights belonging to the estate of Kenneth Mang'ara Waiyaki. They have provided no Grant of Representation for the said estate. Under section 82 of the Act, they lack the legal capacity to sue on behalf of that estate.
12. Finally, the judgement in this matter was delivered 5 years ago. The Applicants have shown no reason for the delay.
13. Accordingly, the Application dated 19 September 2025 is dismissed with costs to the 3rd Petitioner/Respondent.

DATED AND DELIVERED AT NAIROBI THIS 28 DAY OF NOVEMBER 2025

**HELENE R. NAMISI
JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For the Executor:	Mr Mabachi
For 1 st Objector:	N/A
For the 2 nd Objector:	Ms Nganga
For the Applicants/Proposed Interested parties:	N/A
Court Assistant:	Lucy Mwangi