



**In re Estate of Fredrick Rukwaro Nderitu (Deceased) (Probate & Administration
E006 of 2023) [2026] KEHC 641 (KLR) (26 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 641 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
PROBATE & ADMINISTRATION E006 OF 2023
LN MUTENDE, J
JANUARY 26, 2026**

BETWEEN

NICHOLAS NGURE NDERITU 1ST APPLICANT

CATHERINE WANGU GICHUNGU 2ND APPLICANT

EDITH NYOKABI KIGAMBA 3RD APPLICANT

AND

JUDITH ITATA WAIHENYA RESPONDENT

RULING

1. Fredrick Rukwaro Nderitu, Deceased, died Intestate aged 67years on the 19th September, 2017, domiciled in Karagoini, Nyandarua County. A succession cause was instituted by Nicholas Ngure Nderitu, Catherine Wangui Gichungu and Edith Nyokabi Kigamba herein after “Petitioners”. In the petition for letter of administration Intestate it is stated that the deceased was survived by; Nicholas Ngure Nderitu, a son and Francis Nderitu Waihenya, a grandson and son of the deceased’s son James Waihenya Nderitu who died on 16th November, 2020, Intestate and the deceased was not survived by any other dependant.
2. Assets and liabilities left by the deceased were listed as follows;

Assets;

Marmanet/North Rumuruti Block 2/5739Nyandarua/Karagoini/550Nyandarua/Leshau
Karagoini Block 2(Kahembe)/134Marmnet/North Rumuruti Block 2/5735Marmanet/
North Rumuruti Block 2/5737Marmanet/North Rumuruti Block 2/5738Manguo Tumaini
Plot 2701Lekamu shareWiyumiririe Farmers Coop Soc. Ltd Osirua Farm No. 4Ndathi
Mugunda Plot 261Sipili/Ndonyoloip Block 1/6412Sipili/Ndonyoloip Block 1/6413SMEP
Certificate 12404 A/C 75244Nyala Sacco Certificate No. 02419Machamuka Farmers Co. Ltd
Certificate No. 252Safaricom Limited shares



Liabilities:

Nyandarua/Nyahururu Municipality Block 8/230Nyeri/Ngarenaro/439Plot 72 Gwa Kungu

3. The application was gazetted through Gazette Notice No. 7904 where issuance of letters of Administration Intestate was to take place within 30 days of 7th March 2023 if no cause was shown as to why it shouldn't have happened.
4. It turns out that on 17th day of October, 2022, Judith Itata Waihenya filed a Citation to accept or refuse letters of Administration Intestate where she cited Nicholas Ngure Nderitu to refuse or take out letters of Administration in respect of the Estate of Fredrick Rukwaro (Deceased) she described herself as the daughter-in-law of the deceased who was also entitled to share in his estate and she also filed an objection to grant of letters of Administration Intestate which was issued to the Petitioners on 16th July, 2023.
5. Following the events that unfolded through a Notice of Motion dated 4th August, 2023, the Petitioners/Applicants sought orders thus;
 - a. Spent
 - b. Spent
 - c. Spent
 - d. The Secretary, National Registration Bureau be summoned to appear before this court to give evidence on the particulars of the holder of Kenyan ID number 41388592 under the name Judith Itati Waihenya and the particulars of the birth certificate number 0301910184 issued to F.N.W.
 - e. The Director General, Directorate of Immigration Services be summoned to appear before this court to give evidence on the immigration status in Kenya, if any, of the holder of Kenyan ID number 41388592, as averred in the Respondent's affidavit dated 17th October, 2022.
 - f. The Forensic Document Examiners officer in the Directorate of Criminal Investigations to examine the various identity documents uttered by the Respondent to the Office of the Chief of Leshau Location as per her report dated 6th April, 2023 and filed at the court registry on 11th April, 2023.
 - g. The Respondent's objection dated 14th June, 2023 be struck out and expunged from the court's record.
 - h. Declaration be made that the Respondent Judith Itata Waihenya alias Judith Itati Waihenya alias Judith Akol alias Judith Itata Emuria is an imposter/impersonator and is not entitled as a beneficiary or dependent of the estate.
 - i. The costs of this application be provided for.
6. The application is premised on grounds that the Respondent, Judith Itata Waihenya is an imposter who has uttered documents and sworn affidavits before court which are tainted with fraud, forgery and which have been deposited under stolen identities. That the Secretary, National Registration Bureau, the Director General Directorate of Investigations and the Forensic Document Examiners Officer in the Directorate of Criminal Investigators are mandated under the respective statutes establishing the offices to keep registries that can ascertain the veracity of the impugned documents. That the Respondent's objection disclosed no reasonable cause of a citation as it had been filed without an acknowledging answer to the petition or cross petition and that the Respondent lacked locus standi as she was neither



a personal representative of Francis Nderitu Waihenya nor James Waihenya Nderitu and she was not a dependant of the deceased Estate.

7. In a response thereto, through a replying affidavit dated 6th September, 2023, the Respondent deposed that the affidavit deposed was full of falsehoods and actionable defamatory statements by the Applicants, a misguided effort to disinherit her of the rightful share of the estate of the deceased. She denied allegations of forgery and impersonation. She called for expungement of documents/annexures to the affidavit found at pages 12 – 42 which are unmarked from the record for being either misplaced and constituting hearsay evidence.
8. That she is a beneficiary of the estate of the deceased by virtue of marriage to his late son James Waihenya Nderitu and despite the allegation the Petitioner had not reported the matter to the police to be investigated by the criminal investigation agencies.
9. The application was canvassed through viva voce evidence. PW1 Nicholas Ngure stated that the Respondent and other people were intermeddling with the estate of the deceased. That his nephew and late brother's son F.N.W. has a mother but the issue is she has conflicting documents as her identity card is uncertain. That the nephew was born in Uganda as his brother was in Uganda but not married. That there was visitation in Uganda but no customary marriage took place though he admitted that per his brother's eulogy, he met the love of his life in Uganda in 2013 and got married in a cultural marriage and they were later blessed with a baby boy, F.N. He admitted that the photographs exhibited were for traditional ceremonies but argued that the lady introduced herself as Judith Akol. He acknowledged a letter written by his late brother where he confirmed that the Respondent Judith Itata was his wife and F.N.W. his son. He argued that the mother of his nephew was Judith Itata Emuria but he could not tell if she was the same as Judith Akol.
10. On re – examination he stated that Judith Akol was the one residing at their home, a shared facility, with her son.
11. DW1 Judith Itati Waihenya stated that the name Judith Akol was a nickname while Emuria is her father's name, that her Ugandan identity card bears her names Itata Judith Emuria while her Kenyan identity card bears the name Judith Itata Waihenya. That the name Itati ought to be Itata. That she intended to have it rectified. That the Assistant Chief Leshau wrote a letter to introduce her to the Registrar. Acknowledging the 1st Petitioner as her brother in-law she stated that he goes home where she stays.
12. That after she married the deceased James Waihenya in 2013 she went to stay with his parents. That the information regarding the date of birth on the identity card was erroneous.
13. DW3 Josphat Kipsaina the Assistant Chief, Karagoini, testified that the Respondent, Judith Itata was married to Fredrick Rukwaro Nderitu's son who is now deceased and were blessed with a child F.N. He admitted having written a letter to the Registrar of Persons requesting registration of Judith who was of Ugandan heritage but who has resided at the home of Fredrick Rukwaro Nderitu since 2013 a fact within his knowledge; plot No. Nyandarua/Leshau Karagoini Block 2(Kahembe)/134 and when she went to his office seeking a letter to file a succession cause in respect of her husband James Waihenya he issued the same.
14. The application was disposed through oral submissions and written submissions.
15. It is urged by the Applicants that the application addresses continued attempts by the Respondent to unlawfully lay claims to the estate of the deceased which is fraudulent and a misrepresentation which is also an attempt to disinherit the legitimate heirs. That the Respondent does not qualify as a dependant or personal representative of the deceased. That for the question of identity to be determined, the



Registrar of Persons, Directorate of Immigration and DCI should issue a report to assist the court determine the identity of the Respondent.

16. It is however submitted by the Respondent that the deceased son of Fredrick Rukwaro Nderitu (deceased), James Waihenya, was married to the Respondent Judith Itata Waihenya and were blessed with one child F.N.W. therefore the issue of impersonation does not arise. That she has been completely excluded and if she is an imposter she could not have appeared on a letter issued by the Chief of the area. And, even the Applicant (1st Petitioner) was present per the photos exhibited at the dowry negotiations, he now claims did not take place.
17. I have considered the application, affidavits in support and opposition together with annexures thereto and rival submissions. The preamble to the *Law of Succession Act* provides that;

An Act of Parliament to amend, define and consolidate the law relating to intestate and testamentary succession and the administration of estates of deceased persons; and for purposes connected therewith and incidental thereto.
18. This being a family court dealing with succession matters, its purpose is to determine family disputes relating to property inheritance to ensure that the estate of the deceased is distributed in accordance with the Law of Succession. Dependants of the deceased must be properly provided for and those unauthorized cannot be allowed to intrude in the affairs of the estate of the deceased which is governed by the *Law of Succession Act*. The statutory framework differs from the penal law which ensures harmful actions to the society are addressed. A conduct that is offensive should be dealt with under the Penal Code or any other statute enacted to address such prohibited behaviour.
19. It has been demonstrated that the Respondent herein has lived at the home of the deceased since the year 2013. Further there is a birth certificate (number withheld) issued to F.N. whose date of birth is 23rd September, 2015. His father is indicated as James Waihenya Nderitu while his father is Judith Itata Emuria. The birth certificate was issued at Nyandarua North.
20. Further, it has been demonstrated through the eulogy of James Waihenya Nderitu that he was married to Judith Waihenya in Uganda in 2013 in a cultural marriage and they were later blessed with a baby boy F.N.
21. The Applicant acknowledges the fact of having gone to Uganda to attend some cultural ceremonies that the Respondent argues were dowry negotiations but the Applicant dismisses the ceremonies as mere visitation. On being questioned in court, the 1st Applicant acknowledged the Respondent as his nephew's mother. And that she lives at his rural home with the child.
22. Acknowledging that she is known as Judith he argues that she is an imposter by virtue of different names. The Respondent however argues that one of her names Akol was a nickname while there was misspelling of her other names. There would be no illegality with using an assumed named and even misspelling of a name would be generally not be a crime if it is an innocent error not intended to deceive. It is for this reason that a family or succession court cannot usurp investigative powers of investigative agencies that are responsible for gathering information and analysing such evidence to establish the truth of the matter.
23. An interrogation of the *Law of Succession Act* shows that it does not have an express statutory provision that gives this court the power to order immigration investigations. This function would fall under the *Kenya Citizenship and Immigration Act*. The Kenya Citizen and Foreign Nationals Management Service Board which regulates registration of persons, their residency including removal of prohibited immigrants would be better placed to investigate such concerns, powers that cannot be usurped



in probate proceedings. The family court exercises jurisdiction to determine matters relating to the deceased estate. And where one of the dependants of the estate is married to a foreign spouse, sibling(s) cannot bar the spouse or her biological child from inheriting simply because she is a foreigner. What would need to be established is if the foreign marriage was valid. A cultural marriage being celebrated according to the rites, customs and traditions in a particular African community at least where one of the parties belong would be considered a legal marriage.

24. The upshot of the above is that the application dated 4th August, 2023 be and is hereby dismissed with costs to the Respondent.

25. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26TH DAY OF JANUARY, 2026.

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L.N. MUTENDE

JUDGE

