



**In re Estate of Isaac Mote Kiniti (Deceased) (Probate & Administration  
1432 of 2003) [2026] KEHC 1583 (KLR) (Family) (13 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1583 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
PROBATE & ADMINISTRATION 1432 OF 2003  
H NAMISI, J  
FEBRUARY 13, 2026  
IN THE MATTER OF THE ESTATE OF ISAAC MOTE KINITI (DECEASED)**

**BETWEEN**

**PENINAH KIBUI NJUGUNA ..... APPLICANT**

**AND**

**MARY NDUTA NJUGUNA (PERSONAL REPRESENTATIVE OF ESTATE OF  
PETER NJUGUNA KINITI - DECEASED) ..... RESPONDENT**

**RULING**

1. The Deceased herein passed away on 1 June 1977. According to the Petition for Grant of Letters of Administration Intestate, the Deceased was survived by 9 Beneficiaries: his widow, Mary Nduta Njuguna, And Their 8 Children, Namely, Mariam Wanja Muchiri, Naomi Wanja Kiniti, Loise Nyambura Mungai, Peninah Kibui Njuguna, Peter Njuguna Hiuhu, Ann Wanjiku Gatherer And Gladys Wamuhu Kiniti.
2. The Applicant, Peninah Kibui Njuguna, holds a valid 2011 Judgment by Maraga, J. and a 2017 enforcement Ruling by Muigai, J. allocating her 0.3 acres of the suit property, L.R. No. Kiambaa/Thimbigua/1141. The original Respondent, Peter Njuguna Kiniti, passed away on 23 May 2017, and his widow, Mary Nduta Njuguna, took over as the Administrator of his estate. Mary Nduta Njuguna subsequently passed away on 23 January 2023, prompting the Applicant to seek the current substitution of her adult children to finalize the execution of the court's decrees.
3. There are two Applications before this Court. The first is Notice of Motion dated 16 March 2022 filed by the Applicant seeking the following orders:
  - i. That the Order of Mandamus directed to the Respondent, namely Mary Nduta Njuguna, do issue compelling the Respondent within 14 days of the order being made, demolish all



structures erected on the Applicant's designated piece of land and evict all persons in possession of the Applicant's designate piece of land in full compliance with the Ruling made by Hon. M.W. Muigai on 12 April 2017;

- ii. That the Applicant be at liberty to demolish all the structures erected on her piece of land after the expiry of 14 days as ordered in (i) and all the pursuant costs of demolition of the illegal and unlawful encroaching structures and eviction of persons be paid by the Respondent;
  - iii. That the Court does issue a permanent restraining order upon the Respondent from remaining on the Applicant's designate portion of land;
  - iv. That a permanent injunction order to issue, restraining the Respondent from encroaching on the private road reserve accessing the Applicant's designate portion of land;
  - v. That an order do issue for demolition of the part of the Respondent's structure which have encroached on the designate private road reserve accessing the Applicant's designate portion of land;
  - vi. That the OCS Kiambu Police Station do enforce this instant orders together with the orders issued on 12 April 2017 by Hon. M.W. Muigai,J;
  - vii. That the Respondent do pay mesne profits for the continued use and occupation of the property designated for the Applicant/Decree Holder from 24 November 2011 as the Honourable Court will assess;
  - viii. That the Respondent do bear the costs and interest of this Application
  - ix. Any other relief that this Court may deem fit to grant.
4. The second Application, Chamber Summons dated 27 March 2023, seeks the following:
- i. That the Court order the Deputy Registrar Family Division to confirm the court file in this case lost And/or In The Alternative, To Court To Declare The Court File Lost And Subsequently order for the file case to be reconstructed;
  - ii. That the said reconstruction be on the basis of copies of the pleadings filed herewith;
  - iii. That once reconstructed, that the draft Application for substitution of the late Mary Nduta Njuguna – Deceased with any of her adult children namely Alice Kiniti, Elizabeth Wangui, Margaret Wanja, Grace Mbaire, Sarah Wanjiku And Wallace Gitau, be admitted and deemed duly filed and set down for hearing;
  - iv. That upon reconstruction, the file be kept in safe custody in the Court's Registry's strong room;
  - v. That the costs of this Application be provided for.
5. In response to the Applications, the Respondents raised a Preliminary Objection on the ground that the Application is bad in law and an abuse of the court process in that it contravenes Order 24 Rule 4 of the *Civil Procedure Act* which deals with substitution of a Deceased Defendant.
6. Parties were directed to canvass the Preliminary Objection by way of written submissions. The Respondents opted not to file any, and instead relied on their objection and the cited authorities.



### **The Case for the Respondents**

7. The Respondents seek the striking out of the Applicant's suit based on the following grounds:
8. They argue that under Order 24 Rule 4(3) of the Civil Procedure Rules, a suit abates if an application for substitution is not made within one year of a defendant's death. Although acknowledging the Application was dated 27 March 2023, they contend that because it was not prosecuted or heard within the one-year window following Mary Nduta Njuguna's death, the deceased remained unsubstituted and the suit automatically abated. They rely on *Manyange (Deceased) v TG KEHC 1083 (KLR)* and *Mwavula v Bayusuf KEELC 18871 (KLR)* to assert that proceeding against a deceased person is a nullity.
9. The Respondents assert they are not the formally appointed legal representatives or administrators of the deceased's estate, and therefore lack the legal capacity to be sued or substituted.

### **The Case for the Applicant**

10. The Applicant opposes the objection, arguing that the Chamber Summons was filed on 27 March 2023, a mere 63 days after the death of the Respondent, squarely within the statutory one-year limit. The delay in prosecuting the Application was entirely due to the High Court Registry losing the physical court file, necessitating formal file reconstruction proceedings (HCFMISC/E227/2023).
11. While the proposed substitutes lack a formal Grant, they are in active physical possession and control of the estate, acting as de facto administrators and are actively frustrating the execution of the decree.
12. The Applicant argues that the objection is a procedural technicality designed to defeat substantive justice and permanently frustrate a valid court decree, contrary to Article 159(2)(d) of *the Constitution*.

### **Analysis & Determination**

13. A Preliminary Objection must be anchored on a pure point of law that does not require the interrogation of contested facts, as established in the locus classicus *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd EA 696*. While the question of statutory abatement constitutes a point of law, the Respondents have fatally misapplied the doctrine to the present procedural stage.
14. Order 24 Rule 10 of the Civil Procedure Rules provides an absolute exemption: "Nothing in rules 3, 4 and 7 shall apply to proceedings in execution of a decree or order". The underlying rights and liabilities in this suit were conclusively determined in the 2011 Judgment and the 2017 enforcement Ruling. The pending Applications are solely for the execution of those decrees.
15. Kenyan jurisprudence is unambiguous that execution proceedings are immune from abatement. In *Rose Gacheri v Jane Nkirote [2021] eKLR*, the Court held that substitution is not mandatory at the execution stage under Order 24. Similarly, in *Ahmed Ali Ismael v Ali Shuria [2013] eKLR*, the Court permitted the execution of a decree against the estate of a deceased defendant without the necessity of formal substitution, relying on Order 24 Rule 10. The suit has not abated because execution proceedings cannot abate by the effluxion of the one-year timeline.
16. Assuming, strictly for argument, that Order 24 Rule 4(3) did apply, the Respondents' premise remains legally flawed. The rule requires that an application is made within one year. The Applicant formally filed the Chamber Summons on 27 March 2023, which was 63 days after the triggering death.
17. The Respondents' argument that the application was not prosecuted within a year conflates the act of filing with the administrative act of hearing. The delay in hearing was exclusively caused by the



- High Court Family Division Registry losing the physical file, a fact proven by the Applicant's diligent correspondence and subsequent file reconstruction proceedings. The maxim *actus curiae neminem gravabit* (an act of the court shall prejudice no man) applies. A litigant who complies with statutory filing timelines cannot be penalized or nonsuited due to systemic registry failures.
18. The Respondents argue they lack capacity because they do not hold a formal Grant of representation as defined under Section 2 of the *Civil Procedure Act*. However, Section 37(1) of the *Civil Procedure Act* provides a specific statutory mechanism for execution:
- Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the court which passed it to execute the same against the legal representative of such deceased, or against any person who has intermeddled with the estate of such deceased.
19. The Applicant's uncontroverted Affidavit demonstrates that the proposed substitutes are the adult children of the deceased and are in active, physical possession of the suit property, enjoying its benefits while defying the Court's demolition and eviction orders. Under section 45 of the *Law of Succession Act*, unauthorized dealing with a deceased's property constitutes intermeddling. By actively possessing and defending the estate without a Grant of representation, the proposed substitutes operate as intermeddlers. As affirmed in *Ombogo v Standard Chartered Bank of Kenya Limited* 2 EA 481, such actions render them liable. They are, therefore, entirely proper and lawful parties to face execution proceedings under Section 37(1) of the *Civil Procedure Act*.
20. This succession dispute has persisted since 2003, with the Applicant unjustly deprived of her decreed rights since 2011. Article 159(2)(d) of *the Constitution* commands this Court to administer justice without undue regard to procedural technicalities. The Preliminary Objection is a highly technical manoeuvre designed to weaponize the deaths of the Respondents and the administrative failures of the Court registry to permanently defeat a valid judgment. Upholding it would sanction a gross miscarriage of justice.
21. Based on the foregoing analysis, I make the following orders:
- i. The Preliminary Objection dated 26 June 2025 is hereby dismissed in its entirety.
  - ii. The costs of the Preliminary Objection shall be borne by the Respondents, jointly and severally.
  - iii. The Applicant's Chamber Summons dated 27 March 2023 is properly on record. The proposed substitutes (Alice Kiniti, Elizabeth Wangui, Margaret Wanja, Grace Mbaire, Sarah Wanjiku, and Wallace Gitau) are hereby formally enjoined in these execution proceedings as the de facto representatives of the Estate.
  - iv. The Notice of Motion dated 16 March 2022 shall be set down for hearing and final disposal on a priority basis.

**DATED AND DELIVERED AT NAIROBI THIS 13 DAY OF FEB 2026**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For the Applicant: Ms Martha Waweru

For the Respondent: Ms Wanjiku Mwaura



Court Assistant: Lucy Mwangi

