



REPUBLIC OF KENYA



In re Estate of Wilson Mwamba Nyamongo (Deceased) (Succession Cause 899 of 1991) [2026] KEHC 1529 (KLR) (Family) (13 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1529 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 899 OF 1991
PM NYAUNDI, J
FEBRUARY 13, 2026
IN THE ESTATE OF WILSON MWAMBA NYAMONGO(DECEASED)**

RULING

Background

1. The deceased herein died on 21st January 1989 and grant of letters of administration intestate was issued to Josiah Nyagami Mwamba on 7th October 1991. The Grant was subsequently confirmed on 29th December 1993. The Administrator then died on 1st December 2003.
2. Parallel to this cause, the Naftali Ogwoka Mwamba petitioned for grant of letters administration intestate in High Court Succession Cause No. 2217 of 2004, Grant was issued to him on 20th September 2004. This grant was revoked on 3rd October 2024 in ruling delivered by Hon. Chemitei J, who then directed that succession cause No. 2217 of 2004 be consolidated with this cause and this Cause to be the lead file.
3. The applicant has now presented a summons for revocation of the grant issued herein and prayer that he be appointed as the new administrator. The Application is presented Under Order 51 of the Civil Procedure Rules, Section 3A of the [Civil Procedure Act](#), Section 47, 76 (e) and 74 of the [Law of Succession Act](#) and rules 44 and 73 of the Probate and Administration Rules.
4. In response to the Summons the respondent has lodged a Preliminary objection dated 1st August 2025 couched as follows-
 - a. The Application dated 10th March 2025 is bad in law, incompetent and an abuse of Court process of the Court
 - b. The Applicant's application dated 10th March 2025 as filed herein seeking revocation of a confirmed grant and substitution of a deceased administrator with the Applicant as prayed, is not provided for under the Law of Succession.



- c. The Application dated 10th March 2025 as filed is fatally defective and a non-starter as the Applicant ought to have moved the Court for revocation of the earlier grant and Petition for a grant of letters administration de bonis non.
5. In response the Preliminary Objection, the Applicant has filed Grounds of Opposition in which he challenges the competence of the Preliminary Objection.
 6. The Application was canvassed via written submissions. The Submissions of the Applicant are dated 24th August 2025. He frames the issues for determination as-
 - a. Whether the respondent has the legal status to participate in the matter and / or file the instant preliminary objection.
 - b. Whether the Notice of Preliminary Objection is sustainable and / or merited.
 7. It is submitted that since he is not a beneficiary or dependant to the estate of the deceased, the applicant lacks locus standi to present the preliminary objection and participate in the proceedings.
 8. It is submitted that the preliminary objection does not meet the test set out in the case of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696
 9. The Respondent's Submissions are dated 6th November 2025. The issues he frames for determination are-
 - a. Whether the Applicant's application dated 10th March 2025 seeks grant of Letters de bonis non for purposes of completing the Administration of the Estate of the Wilson Mwamba Nyamongo (Deceased)
 - b. Whether the Applicant (Naftali Ogwoka Mwamba) is the right person to apply for the grant of Letters of Administration de bonis non for purposes of completing the Administration of the Estate of the Wilson Mwamba Nyamongo (Deceased)
 10. On the 1st issue it is submitted that the Applicant adopted the wrong procedure and the application should fail on that ground. On the 2nd issue it is submitted that on account of his past conduct he is not a fit person to administer the estate of the deceased. It is submitted that his action of purporting to Petition for a Grant in a parallel process disqualifies him and that with the grant he obtained in Succession Cause No. 2217 of 2004 he had wasted the Estate.

Analysis And Determination

11. The issues for determination are
 - a. Whether the respondent has the locus standi to present the preliminary Objection
 - b. Whether the Preliminary Objection has merit?
 - c. Flowing from the above what are the Consequential orders
12. On the 1st issue, the reason that the applicant wishes to exclude the respondent from the proceedings is that he is neither a beneficiary nor a dependant. It is not disputed that the respondent is the grandson of the deceased herein. His father, now deceased, is a son to the deceased herein. As a grandchild to the deceased, he has an interest in the estate. This was succinctly stated in the Matter of the estate of Veronica Njoki Wakagoto (Deceased) [2013] KEHC 1930 (KLR) where Hon. Musyoka J stated-



The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.

13. Further the Court in *re Estate of Chabari M'Barigi (Deceased)* [2025] KEHC 4653 (KLR) stated as follows-

(21) Under the Section, grandchildren are heirs in intestacy where their own parents who are biological children of the deceased are dead. The Act enables the grandchildren to step into the shoes of their own parents and when they are claiming from the estate of grandparents the share that should have gone to their parents they are not required to take out letters of administration.

14. Consequently, I find that the applicant does have locus standi to participate in these proceedings

15. On whether the preliminary objection has merit. I note that in the submissions, the respondent narrows down to two issues, whether the applicant has followed the right procedure and secondly whether the applicant is a fit person to be appointed administrator.

16. In the locus classicus case of *Mukisa Biscuit Manufacturing Ltd v West End Distributors Ltd* [1969] EA 696 the Court set out the legal threshold of a preliminary objection as:

a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration ... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. (Emphasis Supplied)

17. Further in *Independent Electoral and Boundaries Commission v Jane Cheperenger and others* (2015) eKLR, the Supreme Court stated;

(21) ...The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection- against the profligate deployment of time and other resources. And secondly, it serves the public cause of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword for winning a case otherwise destined to be resolved judicially and on the merits.

18. The preliminary objection herein is not based on a pure point of law, whether the applicant is fit to be appointed as administrator is a question of fact, in which the Court will exercise discretion.

19. It is not in dispute that the grant issued to JOSIAH NYAGAMI MWAMBA has been rendered inoperable on account of his death. No further steps can be taken in administering the Estate until a new administrator is appointed.

20. For this reason, I will dismiss the Preliminary Objection. The Application dated 10th March 2025 will proceed to hearing. The applicant will serve the application on all the beneficiaries of the Estate. Any beneficiary opposed to the application will file response within 14 days.



21. The Applicant is granted leave to file further affidavit within 7 days. The application will be mentioned on 2nd March 2026 to confirm compliance and take further directions.
22. Because of the relationship between the parties, there shall be no order as to costs

It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF FEBRUARY, 2026.

P. M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Fardosa Court Assistant

Joseph Philip Nyamongo Nyagami representing in person

Ms. Kimaru for Intended Administrator

