



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
FAMILY DIVISION
SUCCESSION CAUSE NO. 1679 OF 2007
IN THE MATTER OF THE ESTATE OF JATANE NAWA GUBE
(DECEASED)

FATUMA NAWA MOHAMMED
APPLICANT

-VERSUS-

NOORDIN FAROOQ **1ST**
RESPONDENT

AHMED TARLOCH FAROOQ **2ND**
RESPONDENT

JATANE FAROOQ **3RD**
RESPONDENT

MAIMUNA MOHAMMED IBRAHIM **4TH**
RESPONDENT

RULING

1. The application before the court is dated 19th May 2025. The applicant prays that leave be granted for Fatuma Nawa Mohammed to be added in these proceedings as an interested party. The application was based on the grounds set out therein and the applicant's supporting affidavit.

2. The applicant deposed that the cancellation of letters of administration vide the judgment in Civil Appeal No. 30 of 2019 at the Court of Appeal dated 6th December 2024 necessitated her involvement. She added that she was the deceased's sister, and, therefore, she is the direct heir and beneficiary of the deceased's estate in accordance with Islamic law and the Law of Succession Act.
3. According to the applicant, her rights as a beneficiary to the estate were violated since she was not included in these proceedings from its inception. She deposed that her inclusion would expedite the conclusion of these proceedings.
4. Furthermore, the applicant deposed that these proceedings are subject to Islamic law, and if the orders prayed for are not granted, she will be deprived of her share of the estate as per Islamic law.
5. In response, the 3rd respondent filed a Replying affidavit dated 12th December 2025.
6. The 3rd respondent deposes that the Law of Succession Act does not contemplate the joinder sought by the applicant. It is her position that the applicant has not demonstrated any recognizable interest capable of moving the court, she being neither a beneficiary nor a creditor of the estate. The 3rd respondent avers that the deceased was survived by children and grandchildren, and, in the circumstances, the applicant does not rank as a beneficiary.
7. The 1st and 2nd respondents opposed the application vide a Replying Affidavit dated 14th November 2025. He

deposed that he and the 2nd and 3rd respondents are siblings, while the 4th respondent was only in these proceedings representing the 3rd respondent since she was a minor.

8. According to the 1st respondent, the applicant has never been interested in these proceedings and is only showing interest now after a cross-petition was filed. The 1st respondent deposed that this application is in bad faith. Further to this, he added that there is no provision under the Law of Succession Act on joinder of a party.

Determination

9. I have considered the application and the rival affidavits filed. The issue for determination is whether a sister of the deceased can be enjoined as a party to this suit.
10. The principles governing the admission of parties in succession proceedings are now settled. The Court exercises a judicial discretion, guided by whether the intended party has demonstrated a legally recognisable interest in the estate and whether his or her presence will assist the Court in the effectual and complete determination of the matters in controversy.
11. In **Kibiwott v Bartocho & Another [2025] KEHC**, the High Court reiterated that the purpose of enjoining an interested party is to ensure that all persons likely to be affected by the outcome are afforded an opportunity to be heard, in line with the right to a fair hearing

guaranteed under Article 50(1) of the Constitution. However, the right to be heard is not abstract. It must be anchored upon a demonstrable stake in the estate.

12. That burden rests on the applicant. In **In re Estate of Joanes Obiero Agalo [2025] KEHC**, the Court emphasised that an applicant must establish *locus standi* and satisfy the Court that he or she falls within the category of persons recognised by the Law of Succession Act and the Probate and Administration framework. Likewise, in **In re Estate of M'mmwongo Kichiu [2025] KEHC**, it was held that a stranger to the estate lacks standing to participate in succession proceedings.
13. The Court may, at any stage, add a party whose presence is necessary for the complete adjudication of the dispute. That power has often been traced to Order 1 Rule 10(2) of the Civil Procedure Rules. Yet, as explained in **Francis Karioki Muruatetu & another v Republic & 5 others [2016] eKLR**, the Supreme Court held that joinder must not be used to introduce extraneous matters or claims beyond the issues already before the Court.
14. Succession jurisprudence has therefore maintained a consistent position: participation is confined to genuine heirs, beneficiaries, dependents, or creditors. In **In re Estate of Alfred Mwai Ngenye [2025] KEHC**, the Court reaffirmed that a person outside the recognised statutory categories will not ordinarily be permitted to litigate in an estate matter. A similar approach was adopted in **In re Estate of Stephen Kiplagat Mutai [2025] KEHC**, where the Court held that a person who is

neither a beneficiary nor a dependant within Section 29 of the Act must demonstrate a clear legal basis before being allowed audience.

15. Against that backdrop, the position of a sister in the hierarchy of inheritance is also clear. The relationship between the applicant and the deceased is not disputed. The respondents did not controvert the deposition that the applicant is a sister of the deceased. That fact, however, while material, is not by itself determinative of whether she is entitled to be enjoined in the cause or to benefit from the estate.
16. Where a deceased leaves a surviving spouse or children, they take priority. A sibling does not rank as a beneficiary unless dependency is proved. Where there is neither spouse nor issue, section 39 provides the order of preference, with parents ranking ahead of brothers and sisters. It is only in the absence of those prior classes, or upon proof of dependency, that a sister may assert entitlement.
17. The Courts, therefore, require evidence of three matters: the relationship to the deceased, the absence of heirs with prior statutory priority, or proof that the applicant was maintained by the deceased immediately prior to death. Failing this, the claim remains speculative.
18. In sum, while the Court must guard against shutting out a person who may have a legitimate claim, joinder cannot be granted merely on the basis of kinship. The applicant must demonstrate a proximate legal interest capable of being affected by the orders of the Court.

19. In the premises, the application dated 19th May 2025 is hereby dismissed. Costs shall follow the cause and are awarded to the 1st - 3rd respondents.

Orders accordingly.

DATED and DELIVERED at NAIROBI this 10th day of February 2026.

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E.K. OGOLA
JUDGE

In the presence of:

Mr. Ali.....for the
Petitioner/Respondent

Mr. Mutunga for the
3rd Objectors

Mr. Kinyanjui for the 1st and
2nd Objectors

Gisiele Muthoni Court Assistant