

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE NO. 16 OF 2019

IN THE MATTER OF THE ESTATE OF FESTO MATHENGE
NAMARU (DECEASED)

LYDIA KIRUTIA WANJAU
PETITIONER

VERSUS

SUSAN NYAWIRA MATHENGE.....1ST
INTERESTED PARTY

FESTUS MATHENGE NAMARU.....2ND
INTERESTED PARTY

RULING

1. This is a Ruling on an uncontested application. The Intended Interested Parties, Susan Nyawira Mathenge and Festus Namaru Mathenge are a daughter and son respectively of deceased beneficiaries of the estate: Jerioth Wambui Mathenge and Amos Ndiritu Mathenge.
2. The Summons general dated 18.19.2025 sought the following reliefs:
 - (i) The court be pleased to add Susan Nyawira Mathenge and Festus Namaru Mathenge as interested parties.

(ii) Upon granting (i) above, the court be pleased to substitute Susan Nyawira Mathenge and Festus Namaru Mathenge in the place of Jerioth Wambui Mathenge and Amos Ndiritu Mathenge and order their beneficial shares in this cause be granted to the interested parties.

(iii) Costs in the cause.

3. The Petitioner, Lydia Kiritu Wanjau swore her Replying Affidavit on 3.11.2025 and filed it in court by which she stated that the Summons General should be allowed as she had no objection to it.

4. The Applicants are grandchildren of the deceased. They seek to be joined to the proceedings to take charge of the interest of their parents who were daughter and son of the deceased and who are now deceased. The Petitioner informed the court that Susan Nyawira Mathenge is the only beneficiary of the deceased Jerioth Wambui Mathenge while Festus Mathenge Namaru has 3 other siblings.

5. I see no prejudice in the application through which the estate of the deceased will be effectually distributed and the administrative, accounting and tracing power of the Petitioner made easy. In the High Court case of **In re Estate of Julius Mimano (Deceased) [2019] eKLR** analyzed the unique position in law held by the personal representative of a deceased person by stating as follows:

“...personal representatives administer estates on the strength of legal instruments made to them by the probate court. The vesting of the estate of the deceased on the personal representatives by virtue of section 79 of the Act, flows from the instrumentality of the grant of representation. Upon representation being made, the grant holder then becomes entitled to exercise the statutory powers conferred upon personal representatives by section 82 of the Act and incurs the duties imposed on them by section 83 of the Act. Additional powers flow from and duties are imposed by other statutes, such as the Trustee Act. Under section 82 of the Act, there are powers to enforce and defend causes of action on behalf of the estate, to sell or convert estate assets, to assent to vesting of bequests and legacies on the beneficiaries, among others. Acts done or actions taken on behalf of the estate or for the benefit of the estate would have to be accounted for. In other words, the personal representatives are bound to account for every action they take on behalf of the estate, for they exercise the powers on delegation.”

6. I allow the summons general as prayed.

Determination

7. In the upshot, I make the following orders:

- a) Application to join Susan Nyawira Mathenge and Festus Namaru Mathenge as Interested Parties is dismissed as there are no interested parties in succession.
- b) The shares of the late Jerioth Wambui Mathenge (now deceased) shall be registered in her name pending succession in her estate.
- c) The share of Amos Ndiritu Mathenge (now deceased) shall be registered in the estate of the late pending succession in his estate.
- d) No order as to costs.

DELIVERED, DATED and SIGNED at **NYERI** on this **17th** day of **March, 2026**. Ruling delivered through Microsoft Teams Online Platform.

KIZITO MAGARE
JUDGE

In the presence of: -

No appearance for parties

Court Assistant - Michael