



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 341 OF 2015
IN THE MATTER THE ESTATE OF STEPHEN MBUGUA
GATHUNA (DECEASED)

ARTHUR NDUNGU MBUGUA GATHUNA
APPLICANT

VERSES

LYDIA NJERI MUTUR I..... 1ST
OBJECTOR

LEAH NYOKABI MBUGUA 2ND
OBJECTOR

RULING

1. This ruling relates to the applications dated **15th November, 2024** and **18th November, 2024**.
2. The application dated **15th November, 2024** filed by the Applicant, Arthur Ndungu Mbugua Gathuna; seeking for **ORDERS THAT:**

1. This Honourable Court be pleased to substitute the name of JANE WANJUHI KINYANJUI (deceased) with ARTHUR NDUNGU MBUGUA GATHUNA as Administrator.

2. In the alternative, ARTHUR NDUNGU MBUGUA GATHUNA be enjoined in these proceedings as an Interested Party.

3. Costs be in the cause.

3. The application is based on the grounds thereof and supported by affidavit sworn by Arthur Ndungu Mbugua Gathuna on **15th November, 2024.**
4. He avers *inter alia* that he is an adult son of the deceased, Stephen Mbugua Gathuna and of the late administrator, Jane Wanjui Kinyanjui, thereby asserting direct beneficiary status in the estate. He is the brother to a minor sibling, Fraciah Wambui Mbugua and that he currently holds letters of administration in respect of the estate of the deceased administrator, Jane Wanjui Kinyanjui.
5. That he has duly appointed counsel to represent his interests and that he has been apprised of the nature of the objection proceedings. It is his position that, as a beneficiary, he intends to defend the estate against the Objectors' claims and has prepared witnesses for that purpose. The estate presently lacks a substantive administrator capable of defending it in these proceedings, thereby necessitating his joinder or substitution.

6. The application dated **18th November, 2024** filed by the Applicant, James Macharia, seeks for **ORDERS THAT:**
- 1. Grants ad litem to James Kibera Macharia, Arthur Ndungu Mbugua and Sarah Njambi Gacheke, limited to representing the estate of Jane Wanjuhi Kinyanjui in the pending litigation concerning the estate of Stephen Mbugua Gathuna, specifically:**
 - (a) The application by Simon Ndungu Mbugua dated
2nd November, 2021.**
 - (b) The citation filed by Lydia Njeri Muturi and Leah
Nyokabi Mbugua.**
 - 2. Issues such further orders as may be just in the circumstances.**
7. The application is opposed vide grounds of opposition filed by the 1st Objector Lydia Njeri Gathuna dated **23rd June, 2025** and replying affidavit replying affidavits sworn by Arthur Ndungu Mbugua Gathuna on **28th February, 2025**.
8. The 1st Objector, Lydia Njeri Gathuna vide grounds of opposition dated **23rd June, 2025** opposes both applications dated **15th November, 2024** and **18th November, 2024** on the following grounds.
9. First, that the individuals proposed to replace the late administrator, Jane Wanjuhi Kinyanjui, are not beneficiaries of

- the estate of the deceased, Stephen Mbugua Gathuna, and are therefore not qualified to act as administrators.
10. Secondly, she asserts that, at most, such persons may only be joined in a limited capacity as legal representatives of the estate of the deceased administrator, and only upon obtaining appropriate letters of administration *ad litem* in separate succession proceedings.
 11. Thirdly, it is argued that any substitution, if permitted, should be strictly confined to defending the current objection proceedings and should not extend to full administration of the estate. On the basis of the foregoing, she urges this court to dismiss both applications with costs.
 12. Arthur Ndungu Mbugua Gathuna in his replying affidavit sworn on **28th February, 2025**, avers *inter alia* that he is a son of the deceased, Stephen Mbugua Gathuna, and therefore a direct beneficiary of the estate. His only sibling is a minor. The former administrator, Jane Wanjui Kinyanjui, is deceased and since her demise on **26th October, 2021**, the estate has remained without representation.
 13. On this basis, he has moved the court through the application dated **15th November, 2024** to be appointed administrator so as to defend the pending objections and safeguard the estate from potential waste.
 14. He disowns any representation by the firm of Harry Karanja & Co. Advocates, asserting that he neither instructed the said firm nor executed any authority to act. He specifically

- challenges the authenticity of the “Authority to Act” document relied upon in the application dated **18th November, 2024**, alleging that the signature attributed to him is a forgery or was unlawfully superimposed.
15. He further contends that the alleged execution date, **1st January, 2024**, being a public holiday, casts doubt on its validity and that, in any event, the document relates to a different succession cause and not the present proceedings. Consequently, he urges the Court to strike out the Petition insofar as it is predicated on such purported authority.
 16. The Applicant has filed written submissions dated **8th January, 2026**, the 1st Objector has filed written submissions dated **30th June, 2025** and the 2nd Objector has filed written submissions dated **14th August, 2025**.

ANALYSIS AND DETERMINATION

17. I have read the applications before this court, the responses thereto and the rival submissions.
18. The main issue for determination is whether the Applicant has established sufficient legal and evidentiary basis to warrant substitution as an administrator or, in the alternative, joinder as an interested party.
19. I will first address the grounds of opposition dated **23rd June, 2025** as follows:
20. The law on notices of preliminary objection and grounds of opposition was well discussed **IN THE EAST AFRICAN**

**COURT OF JUSTICE AT ARUSHA FIRST INSTANCE
DIVISION: REFERENCE NO. 8 OF 2017: PONTRILAS
INVESTMENTS LIMITED VERSUS CENTRAL BANK OF
KENYA & THE ATTORNEY GENERAL OF THE REPUBLIC
OF KENYA** where it was stated as follows:

***“23. Having carefully considered the parties’
submissions, it is the considered view of the court
that prior to a substantive consideration of the
said submissions at this stage, it is imperative
that the court confirms that what is before it, is
indeed a preliminary objection point of law that
would be properly determined as a preliminary
objection.***

***24. whereas the matter under consideration was
raised and argued by all the parties as a
preliminary objection, the court is alive to the
importance of proper procedure in the judicial
process.***

***25. In Attorney General of the Republic of Kenya
vs Independent Medical Legal Unit (supra), the
Appellate Division of this Court held:***

***“The improper raising of points by way of
preliminary objections does nothing on occasion
confuse the issues. The court must therefore,
insist on the adoption of the proper procedure for
entertaining applications for Preliminary***

Objections. In that way, it will avoid treating, as preliminary objections, those points that are only disguised as such; and will instead, treat as preliminary objections, only those points that are pure law; which are unstained by facts or evidence, especially disputed points of facts or evidence or such like.”

26. This point was underscored in The Secretary General of the East African Community vs. Rt. Hon. Margaret Zziwa, Appeal No. 7 of 2015 where the court cited with approval the following exposition in Mukisa Biscuit Manufacturing Company Limited vs. West End Distributors Limited (1969) EA 696 (per Newbold), P):

“A Preliminary Objection is in the nature of what used to be demurer. 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 what is sought is the exercise of judicial discretion.”

27. The question of what would constitute a proper preliminary objection was further addressed in Attorney General of Tanzania vs African Network for Animal Welfare (ANAW) EACJ Appeal No. 3 of 2011, where the Appellate

Division of this court held that a Preliminary Objection could only be properly taken where what was involved was a pure point of law, but that where there was any issue involving the clash of facts, the production of evidence and facts, the production of evidence and assessment of testimony it 'should not be treated as a Preliminary Point. Rather, it becomes a matter of substantive adjudication of the litigation on merits with evidence adduced, facts shifted, testimony weighed, witnesses called, examined and cross - examined, and a finding of fact then made by the Court.'

21. The grounds of opposition raise two categories of objections to wit the competency of the Applicant to be substituted as administrator and the extent of his permissible participation in the proceedings.
22. On the first limb, the objection is substantially merited. The evidence on record shows that the Applicant only holds a grant in respect of the estate of the deceased administrator, Jane Wanjui Kinyanjui, and not the estate of Stephen Mbugua Gathuna - the deceased herein.
23. Under the law of succession, grants are estate-specific and without a grant in the subject estate, substitution as administrator is legally untenable. To that extent, the

objection correctly identifies a fundamental defect in the Applicant's claim to full administrative authority.

24. On the second limb, however, the objection overreaches. While it is correct that the Applicant cannot automatically assume administration, the contention that he is not a beneficiary is not conclusively borne out by the material before this court. The annexures, particularly the birth certificate linking him to the deceased administrator and his uncontested assertion of being a son of the deceased, raise a *prima facie* beneficial interest. This creates a triable issue rather than a pure point of law, thereby weakening the objection insofar as it seeks outright dismissal of the application on that ground.
25. Further, the argument that the Applicant can only participate upon obtaining grant *ad litem* is legally sound in principle but overly rigid in application. The jurisprudence on joinder permits this court to enjoin a party who demonstrates a proximate interest and potential prejudice, even in the absence of full letters of administration. Given the admitted fact that the estate currently lacks representation, this court retains inherent jurisdiction to prevent injustice by allowing limited participation.
26. Accordingly, I find that the grounds of opposition are partially merited *to wit* they succeed in opposing substitution as administrator but fail to justify outright exclusion of the Applicant from the proceedings. I further

hold that much as the Applicant may not be appointed administrator without a direct grant in the subject estate, he has demonstrated sufficient interest to be heard.

27. Moving onto the substance of the applications dated **15th November, 2024** and **18th November, 2024**, I find that while the Applicant asserts beneficiary status as a son of the deceased, the evidence on record presents an inconsistency.
28. In the supporting affidavit sworn on **15th November, 2024**, a birth certificate is annexed linking him to the deceased administrator, whereas in the replying affidavit sworn on **28th February, 2025**, no such document is exhibited to reaffirm his relationship to the deceased whose estate is in issue. This creates gap as to his direct entitlement under **Section 29** of the Law of Succession Act. Consequently, his *locus standi* as a beneficiary of the estate of Stephen Mbugua Gathuna remains only partially established and not conclusively demonstrated.
29. Further, this court must interrogate the legal propriety of substitution. The annexures confirm that the Applicant holds letters of administration in respect of the estate of the deceased administrator, Jane Wanjui Kinyanjui, and not the estate of the deceased herein, Stephen Mbugua Gathuna, the subject to these proceedings. Representation in succession proceedings is estate-specific and a grant in one estate does not confer authority in another.

30. The Applicant's interest is therefore derivative and does not automatically translate into the right to administer the estate herein. This supports the 1st Objector's contention that, at best, the Applicant may only participate in a limited representative capacity, and even then, subject to proper legal authority such as *grant ad litem*.
31. On the issue of representation and the impugned authority to act, the Applicant raises serious allegations of forgery and lack of instruction. However, these allegations are not supported by cogent evidence such as forensic analysis or corroborative material. As such, they raise contested issues of fact which cannot be conclusively determined at this interlocutory stage and must be resolved through *viva voce* hearing with evidence tested by cross-examination.
32. In the premises, I find that the Applicant has demonstrated a proximate interest in the estate sufficient to justify participation in the proceedings, but has failed to establish a legal basis for substitution as administrator. The threshold for joinder as an interested party has been met to the extent of showing a recognizable stake and potential prejudice if excluded.
33. In light of the foregoing, I direct that:-
 - (a) The Applicant Arthur Ndungu Mbugua Gathuna is hereby enjoined as an Interested Party in these proceedings.

- (b) The objection proceedings herein be heard by way of *viva voce* evidence as a matter of priority.
- (c) Costs shall await the outcome of the cause.

**Dated signed and delivered via video link at Nairobi
this
23rd day of April 2026.**

**H K CHEMITEI
JUDGE**