REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 890 OF 2018

IN THE MATTER THE ESTATE OF JULIUS NG'ANG'A KINUTHIA (DECEASED)

MARY WANGECHI IMBWAGA ..... APPLICANT

VERSUS

TERESIA WAMBUI KINUTHIA ..... 1ST RESPONDENT

CHARLES NJENGA KINUTHIA ..... 2ND RESPONDENT

ONESMUS NGANGA KINUTHIA ..... 3RD RESPONDENT

ALEX KIGURU KINUTHIA ..... 4TH RESPONDENT

PETER NGACHA KINUTHIA ..... 5TH RESPONDENT

ANN PRISCILLA NJERI KINUTHIA ..... 6TH RESPONDENT

RULING

1. This ruling relates to the applications dated **8th March, 2024** filed by the Applicant, Mary Wangechi Imbwaga; seeks for **ORDERS THAT**:

    1. **This Honourable Court be pleased to order that the Applicant, Mary Wangechi Imbwaga, on the one hand, and the 2nd, 3rd, 4th, 5th & 6th Respondents, on the other hand, do submit to a DNA test by the Government Chemist, or such other facility as the Honourable Court may order, to determine the whether the Applicant and the 2nd, 3rd, 4th, 5th & 6th Respondents share a common paternity.**
    2. **In the alternative to 1 above, the remains of Julius Ng'ang'a Kinuthia (Deceased) be exhumed to extract DNA samples by the Government Chemist or such other facility as the Honourable Court may order, and together with samples from the Applicant Mary Wangechi Imbwaga, the Government Chemist or such other facility as the Honourable Court may order, carry out a DNA test to determine the paternity of Julius Ng'ang'a Kinuthia as the biological father of the Applicant.**
    3. **The submission to the DNA test and or collection of the samples above be conducted at a date to be agreed upon between the Applicant and the**

Respondents herein but, in any event, within fourteen (14) days of this order.

4. **The results for the above DNA test in regard to the paternity be forwarded to this Honourable Court by the Government Chemist laboratories or such other facility as ordered in 1 or 2 above.**
5. **The costs of the DNA test and related costs and costs of this application be provided for.**

2. The application is based on the grounds thereof and supported by affidavit sworn by Mary Wangeci Imbwaga on **8th March, 2024** where she avers *inter alia* that she is the deceased's biological daughter and therefore entitled to benefit from his estate.
3. That the deceased died intestate on **4th June, 2017** and the 1st Respondent petitioned for and obtained grant of letters of administration on behalf of herself and the other Respondents, to the exclusion of the Applicant. The grant was obtained through material non-disclosure and concealment of her existence as a beneficiary and the Respondents were at all material times aware of her relationship with the deceased.
4. She asserts that her mother, Ann Wangari Kanyiri, had a prior relationship with the deceased which resulted in her birth before the deceased subsequently married the 1st Respondent. She had a longstanding relationship with the deceased, including recognition within the extended family

and that the Respondents' omission of her name from the succession proceedings was deliberate and fraudulent.

5. In support, she annexes, *inter alia*, a copy of the earlier application for revocation of grant, documents relating to the deceased's estate including property records and materials intended to demonstrate her connection to the deceased such as a eulogy and personal records.

6. She further depones that the estate has already been distributed pursuant to the confirmed grant, thereby prejudicing her interests as a beneficiary, and that some properties, specifically **L.R. No. 209/3532/7** (Songok Walk, Nairobi) and **L.R. No. 495314/VI** Thika Municipality, were either omitted or irregularly dealt with.

7. She expresses apprehension that the Respondents may further alienate estate assets to defeat her claim. She contends that efforts to resolve the matter amicably, including attempts to convene a family meeting, were unsuccessful, necessitating the present application.

8. The application is opposed vide replying affidavit and further affidavit sworn by Teresia Wambui Kinuthia on **12th May, 2025** and **12th September, 2025**. She avers *inter alia* that no credible nexus has been established between the Applicant and the deceased so as to justify the orders sought, including DNA testing and possible exhumation. The Applicant has failed to discharge the evidentiary burden required to prove paternity or dependency, having not produced any primary documentation such as a birth

certificate, school records, or other official records linking her to the deceased.

9. She further disputes the Applicant's assertions that she was acknowledged or maintained by the deceased, noting that such claims remain unsubstantiated and unsupported by documentary or corroborative evidence.

10. On the question of DNA testing and exhumation, she maintains that the orders sought are invasive, extraordinary and legally untenable in the absence of exceptional circumstances. It is contended that courts are reluctant to compel non-consenting adults to undergo DNA testing and that exhumation of a deceased person's remains should only be permitted as a last resort, where compelling justification has been demonstrated. She asserts that no such threshold has been met, particularly given the lapse of time since the deceased's burial, which raises concerns regarding both the integrity of potential DNA samples and the need to preserve the dignity and finality of burial.

11. The application is thus characterized as speculative and unsupported by sufficient legal or factual grounding. She further avers that the succession process relating to the deceased's estate was conducted procedurally and in compliance with the law. Evidence annexed includes the Kenya Gazette Notice, which demonstrates that the petition for grant of letters of administration was duly advertised,

thereby affording any interested party an opportunity to object.

12. The Applicant is said to have failed to lodge any objection within the statutory period and the grant was subsequently issued and confirmed leading to the estate being distributed accordingly. Additional annexures, including a Google search extract, are relied upon to show that the deceased's death and estate proceedings were publicly accessible, thereby rebutting any claim that the process was undertaken clandestinely.
13. In the further affidavit, she supplements the evidentiary record by introducing annexures aimed at impeaching the Applicant's credibility and consistency. She relies on a YouTube interview link in which the Applicant allegedly identifies her lineage without reference to the deceased, thereby contradicting her claim of filiation. Further, documentary evidence comprising a church marriage notice and related civil marriage documentation, indicate that the Applicant used her name Imbwaga and did not associate herself with the deceased's family.
14. In support of the application, the Applicant has filed written submissions dated **18th September, 2025**.
15. The Respondents have not filed written submissions.

ANALYSIS AND DETERMINATION

16. I have read the application before this court, the responses thereto and the rival submissions.

17. The central issue for determination is whether the Applicant has laid a sufficient legal basis to warrant orders for DNA testing and, in the alternative, exhumation of the deceased's remains to establish paternity.
18. In the past the court when faced with such an issue have pronounced themselves.
19. For instance, in **MAO v JOO & another [2022] KEHC 3364 (KLR)**, the court stated as follows: "***26. Taking the above principles into consideration and having scrutinized the Appellants' memorandum of appeal and submissions for and against this appeal, I find that the only issue for determination is whether the appellant merits grant of orders for a siblings' DNA tests, in order to determine the 1st Respondent's paternity. 27. There is no consensus from the courts in cases where the courts have been asked to order for DNA tests to determine paternity on matters involving adults some of whom are non-consenting. Some courts hold the view that for an order for DNA test to be made, a basis must be laid; and that a nexus or connection between the Applicant and the person the order is being sought against must be established. 28. The other school of thought is that DNA test is to be allowed in fact-finding, to establish the truth and reach a just conclusion even where no nexus or connection has been established, if the need is eminent. 29.***

In S.W.W. v G.M.K. (2012) eKLR where the petitioner sought as one of her prayers, for the Respondent to be subjected to a DNA test to ascertain whether he was her biological father, in declining the prayer, the court was of the view that: "Ordering the Respondent to provide DNA for whatever reason is an intrusion of his right to bodily security and integrity and also the right to privacy which rights are protected under the Bill of Rights. The Petitioner bears the burden of demonstrating to the court the right she seeks to assert or vindicate and which the court would consider as overriding the Respondent's rights." 30. In RMK v AKG & Attorney General (2013) e KLR the court had this to say on the issue of whether or not to order for a paternity DNA test: "The petitioner stated that the court should order a DNA test nevertheless as the facts in the deposition have not been challenged. As I have observed, the burden remains on the petitioner to establish by pleadings and evidence sufficient nexus between him and the Respondent in order to persuade the court to grant the orders. In this case there is no evidence to support such a course." 31. In Wilfred Karenge Gathiomi v Joyce Wambui Mutura & another (2016) eKLR, the court stated that: "Therefore, since under our law sections 107 108 & 109 of the Evidence Act cap 80 mandates that he

who alleges must prove; the Applicant is the one who raised the issue of paternity against the 1st Respondent. He did not prove. The 1st Respondent claimed in spite of the date contained in her ID card she was born in 1950. She did not prove the same. Therefore, the only option is to result to scientific method for conclusive results. Both parties should undergo a sibling DNA testing to confirm if they are of the same father or not. The court finds that the DNA testing will not cause substantial loss to the Applicant, except inconvenience that is less important to finding a lasting solution to the issue raised in the first place…In light of above-cited authorities that DNA is intrusive and interferes with the right to privacy, this court finds basis for the DNA testing. Paternity is central to the dispute at hand, whether the 1st Respondent is one of the beneficiaries of the estate of the deceased's estate. It is the only way to resolve the paternity issue, the Applicant raised and is now reluctant to pursue the matter to its logical conclusion. The DNA testing will not prejudice the Applicant's case pending appeal, as he has not advanced any proposal on how to resolve issue it was his word against his. 54. In DNM vs JK 2016 eKLR Onguto J [RIP] persuasively stated as follows and I concur that: "a) "The law on the topic of compulsory blood or DNA testing in

paternity disputes, which is also partly an issue in the petition here, is yet to be completely and satisfactory developed locally. There is no express legislative framework, which specifically regulates the position in Civil cases. The few Judicial pronouncements on the topic do not appear unanimous in approach or principle. b) Whereas in relations to children, the courts have occasionally been quick to act in the child's best interest and ordered DNA testing, with regard to non-consenting adult the Jurisdiction has been left hazy ---”c) In conclusion I hold the view that where paternity is in dispute then with reasonable limits and in appropriate cases DNA testing of non-consenting adults may be ordered even at an interlocutory stage. The bid to establish the truth through scientific proof must however not be generalized and should never so lightly prevail over the right to bodily integrity and right to privacy until it is clear that such rights ought to be limited. The clarity is only established where an undoubted nexus is shown as well as a specified quest to protect or enforce specific rights. Untested and controverted affidavit evidence, may not suffice.” 55. As was held by Majanja J in SWM v GMK [2012] eKLR: “Ordering the Respondent to provide DNA for whatever reason is an intrusion of his right to bodily security and

integrity and also the right to privacy which rights are protected under the Bill of Rights. The petitioner bears the burden of demonstrating to the court the right she seeks to assert or vindicate and which the court would consider as overriding the Respondent's rights. 56. I am totally in agreement with my brothers Onguto and Majanja JJ that a party seeking DNA test must demonstrate a nexus as well as a specified quest to protect or enforce specific rights. In the present case, it has been demonstrated that a relationship did exist between the 1st Respondent and the deceased. The 1st Respondent is not a total stranger who has emerged from nowhere and decided to claim that the deceased is the biological father. 57. Munyao, J. of the Environment and Land Court had occasion to consider this very contentious issue of DNA in Benjamin Kibiwot Chesulut v Mary Chelangat & another [2015] eKLR. The learned Judge stated: "I interpret this test to mean that, DNA ought only to be permitted where it is necessary for the determination of the issue before court. Where it is not going to determine a key issue in the case, then DNA ought to be denied. This is because DNA is seen as an intrusive procedure that has the effect of invading one's right to privacy…. 58. I further agree with Munyao, J. that DNA should

be permitted where it is necessary to determine an issue before the court. Recognizing the intrusive nature of a DNA test, the same should be denied where it would not determine a key issue in a matter. I find that DNA testing is not the Key issue in the succession proceedings which began way back in 2018. If that had been the case, then the appellant would not have waited until three years after consenting to the 1st responded to be administrator of the estate of the deceased to raise the issue on account of the alleged queer character of the 1st Respondent…"

20. In **Njoroge v Githinji & 2 others [2023] KEELC 20799 (KLR)**, the court pronounced itself as follows: "***28. On exhumation, this court is reminded that power to grant such orders is well laid out under the Public Health Act. Section 146 provides: Section 146 of the Public Health Act states as follows: - (1) Subject to the provisions of section 147, it shall not be lawful to exhume anybody or the remains of anybody which may have been interred in any authorized cemetery or in any other cemetery, burial ground or other place without a permit granted in manner hereinafter provided. (2) Such permit shall be granted only to the legal personal representative or next of kin of the person buried, or to his or their duly authorized agent. (3) Such permit***

may be granted by the Minister in respect of anybody or the remains of anybody interred in any cemetery or burial ground or any other place. (4) The permitting authority may prescribe such precautions as he may deem fit as the condition of the grant of such permit, and any person who exhumes anybody or the remains of anybody contrary to this Act, or who neglects to observe the precautions prescribed as the condition of the permit, shall be guilty of an offence and liable to a fine not exceeding one thousand five hundred shillings: Provided that nothing herein contained shall be deemed to affect the right of a magistrate to order the exhumation of a body or the remains of anybody for the purpose of holding an inquiry into the cause of death of any person. 29. The trial court acted within the confines of the law as elaborated above in granting the exhumation orders and it cannot be said to have acted beyond the powers allowable..."

21. While the Applicant asserts that she is the deceased's biological daughter and was excluded from succession proceedings through concealment, the Respondents challenge both the existence of such relationship and the sufficiency of proof tendered.
22. The jurisprudence as reflected in the authorities above, establishes that DNA testing particularly involving non-

consenting adults, is an intrusive process that implicates constitutional rights to privacy and bodily integrity and therefore, can only be ordered where a clear nexus between the claimant and the deceased has been demonstrated.

23. In the present case, the Applicant has not furnished primary or cogent documentary evidence demonstrating filiation, such as a birth certificate, consistent identification records, or corroborative testimony linking her to the deceased. The annexures relied upon, including a eulogy and personal records, do not rise to the threshold of proof required to establish even a *prima facie* nexus.

24. Conversely, the Respondents' annexures such as the Gazette Notice confirming due process in the grant proceedings and materials illustrating inconsistencies in the Applicant's identity and representations, serve to weaken the credibility of the claim and support the contention that the application is belated and speculative. In these circumstances, the evidentiary burden imposed under Sections **107** – **109** of the Evidence Act remains undischarged.

25. Further, the prayer for exhumation must be approached with even greater circumspection, being an exceptional remedy governed by statute and public policy considerations. As underscored in **Njoroge v Githinji & 2 others** above, exhumation is only permissible upon strict compliance with legal requirements and where compelling

justification exists. In the absence of a demonstrated nexus or necessity and given the lapse of time since burial, I fine that such an order would unjustifiably interfere with the dignity of the deceased and the rights of the Respondents.

26. Accordingly, the Applicant has failed to establish sufficient grounds to warrant either DNA testing or exhumation.

27. **For the above reasons the application dated 8th March, 2024 is hereby dismissed for lack of merit.**

28. **Each party to bear its own costs.**

Dated signed and delivered at Nairobi via video link this

16th day of April 2026.

H K CHEMITEI
JUDGE