



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 539 OF 2018**  
**IN THE MATTER THE ESTATE OF WILFRED NYAMARI**  
**OTIENO (DECEASED)**

**LENAH                      KAIMURI                      KATHIA                      .....**  
**APPLICANT/PETITIONER**

**VERSUS**

**ANNE                      KOKI                      NDING'A                      .....**  
**RESPONDENT/PROTESTOR**

**RULING**

1. This ruling relates to the application dated **26<sup>th</sup> February, 2025** filed by the Applicant, Lenah Kaimuri Kathia; seeking for **ORDERS THAT:**
  1. ***Spent.***
  2. **This Honourable Court be pleased to grant leave to the Petitioner/Applicant to introduce and rely on the letter dated 28th January 2025 from the Ministry of Interior and National Administration, State Department for Immigration and Citizen Services, Civil Registration Services, confirming**

**that Birth Certificate Serial No. 8122798 does not exist in their records.**

- 3. This Honourable Court be pleased to allow the said letter to be admitted as part of the Petitioner/Applicant's evidence in these proceedings.**
  - 4. This Honourable Court be pleased to grant the Protestor/Respondent leave to challenge the said document, if necessary.**
  - 5. This Honourable Court be pleased to issue such further and/or other orders as it may deem just and appropriate in the circumstances.**
2. The application is based on the grounds thereof and supported by affidavit sworn by Lenah Kaimuri Kathia on **26<sup>th</sup> February, 2025** who avers *inter alia* that she is the duly appointed administratrix of the deceased's estate, having been issued with a grant of letters of administration on **27<sup>th</sup> December, 2018**. The Respondent subsequently filed summons for revocation of the grant on **28<sup>th</sup> May, 2019**, asserting beneficiary status on behalf of herself and a minor, Patience Mutanu.
  3. The foundation of that claim, as deponed, rests principally on a birth certificate Serial No. **8122798** allegedly evidencing that the deceased was the father. She challenges the probative value of that birth certificate, noting that no evidence of marriage or cohabitation between the deceased and the Respondent has been

established and that the paternity claim is solely anchored on the impugned birth certificate, which was issued posthumously, raising serious legal and evidentiary concerns.

4. She further avers that the timing and circumstances surrounding the issuance of the birth certificate render it inherently suspect, as it was issued on **5<sup>th</sup> April, 2018**, approximately **2** months after the deceased's demise on **16<sup>th</sup> February, 2018**. She contends that, under Kenyan law, the inclusion of a father's name in a birth record ordinarily requires his consent, which would have been impossible in the circumstances.
5. That acting on this suspicion, she instructed her advocates to formally seek verification from the Civil Registration Services through a letter dated **17<sup>th</sup> January, 2025**. The response received from the Ministry of Interior and National Administration, dated **28<sup>th</sup> January, 2025**, unequivocally confirms that the said birth certificate does not exist in official records. She therefore characterizes the document as a falsified instrument, fraudulently introduced to mislead the court and to procure an unlawful share in the estate.
6. The application is opposed vide replying affidavit sworn by Anne Koki Nding'a on **19<sup>th</sup> March, 2025**. She avers *inter alia* that she is the biological mother of the minor, Patience Mutanu and opposes the application dated **26<sup>th</sup> February, 2025** on the basis that it is unnecessary, belated and

intended to delay the finalization of the matter, which she states is already at the tail end of hearing with all objectors having testified.

7. She contends that the attempt to introduce further evidence is an abuse of the court process and seeks dismissal of the application with costs. Substantively, she maintains that the birth certificate relied upon was not fraudulently obtained, asserting that what is material is the source of the information used in its issuance rather than the date of issuance and that the details were derived from ante-natal records and official notifications at the time of birth.
8. She further avers that the minor's paternity is corroborated by contemporaneous documentation, including a child health card and an acknowledgment of birth notification, both of which bear the deceased's name as the father. She also relies on photographic evidence to demonstrate a subsisting relationship with the deceased and his recognition of the minor, asserting that they cohabited as husband and wife and jointly raised the child.
9. Additionally, she states that the deceased financially supported the minor, evidenced through M-Pesa statements and a bank account opened in the minor's name, into which the deceased allegedly deposited funds for her upkeep and education. She therefore contends that the application is calculated to unjustly disinherit the minor and defeat her entitlement to the estate.

10. In support of the application, the Applicant has filed written submissions dated **3<sup>rd</sup> October, 2025**.
11. In opposition to the application, the Respondent has filed written submissions dated **28<sup>th</sup> February, 2026**.

### **ANALYSIS AND DETERMINATION**

12. I have read the application before this court, the responses thereto and the rival submissions.
13. The issue for determination is whether this court should grant leave to the Applicant to introduce additional evidence, namely the letter dated **28<sup>th</sup> January, 2025** from the Civil Registration Services, confirming that the impugned birth certificate does not exist.
14. The governing principles on admission of additional evidence require that such evidence be relevant, credible, incapable of earlier production with reasonable diligence and necessary for a just determination of the dispute as has been elaborately pointed out in the authority below.
15. In Kigo v Attorney General & 4 others [2025] KECA 267 (KLR) it was stated as follows: “... **19. Further, in the case of Mohammed Abdi Mohamud vs. Ahmed Abdullahi Mohamed & 3 Others [2018] eKLR, the Supreme Court laid the principles to be considered in allowing additional evidence as follows: “79... We therefore lay down the governing principles on allowing additional evidence in appellate courts in Kenya as follows: a. the additional**

***evidence must be directly relevant to the matter before the court and be in the interest of justice; b. it must be such that, if given, it would influence or impact upon the result of the verdict although it need not be decisive; c. it is shown that it could not have been obtained with reasonable diligence for use at the trial, was not within the knowledge of, or could not have been produced at the time of the suit or petition by the party seeking to adduce the additional evidence; d. Where the additional evidence sought to be adduced removes any vagueness or doubt over the case and has a direct bearing on the main issue in the suit; e. the evidence must be credible in the sense that it is capable of belief; f. the additional evidence must not be so voluminous making it difficult or impossible for the other party to respond effectively; g. whether a party would reasonably have been aware of and procured the further evidence in the course of trial is an essential consideration to ensure fairness and due process; h. where the additional evidence discloses a strong prima facie case of willful deception of the Court; i. The Court must be satisfied that the additional evidence is not utilized for the purpose of removing lacunae and filling gaps in evidence. The Court must find the further evidence needful; j. A party who has been unsuccessful at the trial must***

***not seek to adduce additional evidence to, make a fresh case in appeal, fill up omissions or patch up the weak points in his/her case; k. The court will consider proportionality and prejudice when allowing additional evidence. This requires the court to assess the balance between the significance of the additional evidence, on the one hand, and the need for the swift conduct of litigation together with any prejudice that might arise from the additional evidence on the other...”***

16. In the present case, the central issue in the succession proceedings is the paternity of the minor and consequently, her entitlement as a beneficiary to the deceased's estate.
17. The authenticity of the birth certificate is therefore not peripheral but goes to the root of the Respondent's claim. The impugned letter directly challenges the existence of that document in official records and, if credible, is capable of materially influencing the outcome of the dispute.
18. On the question of diligence and timing, while the Respondent contends that the application is belated and intended to delay proceedings, I find that the authenticity of the birth certificate only crystallized as a contested issue during the hearing.
19. The Applicant, thereafter, took steps to verify the document through the relevant statutory body, culminating in the response of **28<sup>th</sup> January, 2025**. This evidences reasonable diligence. Moreover, the nature of the evidence, being an

official communication from a public registry, lends it *prima facie* credibility and removes doubt as to the integrity of a document already on record.

20. Conversely, the Respondent's annexures, though cumulatively suggestive of a relationship and possible dependency, remain largely circumstantial and do not conclusively establish paternity, particularly in light of a direct institutional denial of the existence of the foundational birth record.
21. The additional evidence, therefore does not merely fill gaps but addresses a potentially fraudulent or misleading document, thereby aligning with the principle permitting admission where there is a *prima facie case* of deception.
22. In balancing prejudice and the interests of justice, I hold that no irreparable prejudice will be occasioned to the Respondent, as she will have the opportunity to challenge the authenticity and probative value of the impugned letter through cross-examination or further evidence.
23. On the other hand, exclusion of such evidence would risk the court rendering a determination on the basis of a document whose authenticity is seriously in doubt, thereby undermining the integrity of the proceedings.
24. **Accordingly, the application dated 26<sup>th</sup> February, 2025 is merited and is allowed in terms of prayers 2, 3 and 4 only.**
25. **Each party to bear its own costs.**

**Dated signed and delivered at Nairobi via video link  
this  
16<sup>th</sup> day of April 2026.**

**H K CHEMITEI  
JUDGE**