



REPUBLIC OF KENYA



**In re Estate of Simon ndungu Thumbi (Deceased) (Probate & Administration
E016 of 2025) [2026] KEHC 6045 (KLR) (Family) (7 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6045 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
FAMILY
PROBATE & ADMINISTRATION E016 OF 2025**

KW KIARIE, J

MAY 7, 2026

**IN THE MATTER OF THE ESTATE OF: SIMON NDUNGU
THUMBI.....DECEASED**

BETWEEN

JOSEPH NDERITU NDUNGU 1ST PETITIONER

ESTHER WANJIKU NDUNGU 2ND PETITIONER

AND

GABRIEL THUMBI NDUNGU 1ST RESPONDENT

CHARLES MUTAHI NDUNGU 2ND RESPONDENT

ELIZABETH WANGUI GACHUIRI 3RD RESPONDENT

LYDIAH WANJIRU KAMWARO 4TH RESPONDENT

RULING

1. Lydia Wanjiru Kamwaro, the 4th respondent/applicant herein, moved the court through a Summons dated 20th day of February 2026 under Rules 49 & 73 of the Probate and Administration Rules. She is seeking to be included as a fourth administrator.
2. The application is premised on the following grounds:
 - a. That the applicant, Lydia Wanjiru Kamwaro, is the wife of Simon Ndungu Thumbi (Deceased).
 - b. That prior to his demise, Simon Ndungu Thumbi had agreed with one Solomon Kiguru Njuguna, the registered proprietor of L.R.NO: 6585/595 Nyahururu Municipality, for a joint



venture where Simon Ndungu was to construct a building on the plot worth Kshs: 1,500,000/= and pay Kshs. 500,000/= in cash to Solomon Kiguru, and the value of the plot was agreed at Kshs. 2,000,000/= at the time of the agreement.

- c. That on completion of the construction, Solomon was to transfer the plot to both parties in equal shares, and both parties were entitled to all rent accruing from the plot equally.
 - d. That Simon Thumbi died on 25/11/2004 before the execution of the agreement. Still, the 4th respondent/applicant took over the performance of the agreement on his part, and she constructed the building on the plot as intended.
 - e. That Solomon Kiguru Njuguna died on 28/11/2020, before the plot could be transferred to the joint names as intended, and the plot is registered to him to date.
 - f. That the family of Solomon Kiguru Njuguna has filed a Succession Cause for this estate, being Nyahururu H.C. Succession Cause No: 25 of 2022, which cause is yet to be concluded.
 - g. The applicant prays that she be added as an administrator to enable her to pursue the deceased 50% share on L.R.No. 6585/595 Nyahururu Municipality, which is the only asset she is seeking in this Succession Cause.
3. Joseph Nderitu Ndungu, the 1st petitioner, filed grounds of opposition as follows:
- a. This court made a ruling on 29/7/2022 as follows:

To fast-track the hearing and disposal of the matter, Elizabeth Wangui Ndungu, Joseph Nderitu Ndungu and Dr Esther Wanjiku Ndungu are appointed the administrators of the instant estate.
 - b. That even before the appointment of the administrators as per the Law of Succession Act, the matter was advertised in the Kenya Gazette and no objection was raised, after which a Grant of Letters of Administration intestate was granted to the administrators. The applicant did not raise any objection at that stage.
 - c. That amending the Grant of Letters of Administration is an alien phenomenon in the Law of Succession. A grant can only be revoked, not amended.
 - d. The administrators are ready and willing to administer the estate, defend the estate and in all manner, to act in the interest of the estate. The applicant may serve as a witness in any matter concerning the estate's interests without necessarily being appointed as administrator.
 - e. The Administrators are pursuing the estate's interest, which is in danger of being alienated by the estate of Solomon Kiguru Njuguna.
4. Elizabeth Wangui Gachwiri, the 3rd respondent, opposed the application on the following grounds:
- a. That Simon Ndungu had built the plot LR. No. 658/595, BLOCK 4/102, which is a partnership between Solomon Kiguru, as per their agreement.
 - b. That plot No. 6585, Block 4/185 (Nyahururu Municipality), where the applicant lives, was owned and built by Simon Ndungu Thumbi.
 - c. That I have no objection to the applicant taking the whole share, though the deceased intended half the share to go to his siblings.



- d. That all earlier citations, applications and submissions, the applicant did not indicate that she was supposed to get an inheritance.
 - e. That the applicant is not the only wife; Anastacia Muringo was our mother.
 - f. That it is only fair and just for the applicant to get 1.9 Share of the said property and the remaining 8.9 to go to the beneficiaries of Anastacia Murigo.
 - g. That Block 4/185 Nyahururu Municipality No. 6585 is owned and registered by the late Simon Ndungu Thumbi, where the applicant lives.
 - h. That the applicant getting 50% of the Plot L.R. No. 658/595 is that there is no justice and she is taking the lion's share of the two properties, and the same should be shared equally between the children of the deceased and the applicant to have a live interest.
 - i. That plot Block 4/185/6585- Nyahururu Municipality registered under Simon Ndungu is situated at the Thompson Falls area. Most Prime are in Nyahururu town.
 - j. That L.R. No. 658/595 is right at Nyahururu (CBD) next to Cooperative Bank, and its value is quite high compared to the lands and other properties.
 - k. That all deceased assets should be shared equally between all the children and the applicant to get a life interest on the portion that will be transmitted to her daughter, Brenda Wangui.
5. Rule 49 of the Probate and Administration Rules provides as follows:

A person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file a summons supported, if necessary, by affidavit.

6. Section 56 (1) (b) of the *Law of Succession Act* provides:

No grant of representation shall be made—

(b) to more than four persons in respect of the same property.

7. On the 29th day of July 2022, this court (differently constituted) appointed three administrators, and the intention was to fast-track the distribution of this estate. Almost four years on, they have not rendered the account as envisaged under section 83(g) of the *Law of Succession Act*. The section states:

within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;

8. In view of the noncompliance, I am persuaded to add the applicant as an administrator instead of revoking the grant as envisaged under section 76 (d) (iii) of the *Law of Succession Act*, which provides as follows:

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause, either—



(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular;

9. The confirmed grant is accordingly amended to include the applicant as the fourth administrator. This court will grant the administrators 90 days within which to distribute the estate and render the accounts as provided for under section 83(g) of the *Law of Succession Act*. If they fail to do so, and unless the court extends the time for compliance, the court will invoke the provisions of 76 of the Act and revoke the grant.

10. Costs shall be in the cause.

DELIVERED AND SIGNED AT NYANDARUA, THIS 7TH DAY OF MAY 2026

KIARIE WAWERU KIARIE

JUDGE

