

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MILIMANI LAW COURTS

SUCCESSION CAUSE NO. E378 OF 2025

IN THE MATTER OF THE ESTATE OF SAMUEL MARI

KIHIU - DECEASED

HADASSAH WANJIRU

APPLICANT

VERSUS

LUCY WAHITO THAIRU 1ST

RESPONDENT

GEORGE KIHU MARI 1ST PETITIONER/2ND

RESPONDENT

PAUL THAIRU MARI2ND PETITIONER/3RD

RESPONDENT

**MARGARET MUMBI MARI3RD PETITIONER/4TH
RESPONDENT**

RULING

1. The deceased, **Samuel Mari Kihiu**, died on 7th November, 2021 at Kiambu Level 5 Hospital, Kiambu. From the probate file, his remains remain uninterred for four and half (4 ½) years and is still at the mortuary following disagreement over his burial.
2. George Kihiu Mari, Paul Thairu Mari and Margaret Mumbi Mari petitioned for Grant of Letters of Administration intestate. The matter was published in the Kenya Gazette on 18th July, 2025, however, a Grant is yet to be issued.
3. The present proceedings relate to an application dated 13th October, 2025 filed by Hadassah Wanjiru (Applicant). The application seeks the following orders: -

(i) THAT this honourable court be pleased to strike out the petition of letters of administration herein,

(ii) THAT this honourable court be pleased to give further orders and/or directions as it may deem fit and just to grant;

(iii) THAT costs of this application be provided for.

4. The application was responded to by the Petitioners and Lucy Wahito Thairu.
5. From the pleadings and annexures, Lucy is indicated as having married the deceased in a Christian marriage conducted in 1982, and Hadassah (hereinafter referred to as Applicant) is indicated as having married the deceased in a Kikuyu customary marriage conducted in 2015. The Petitioners are identified as the deceased's children (hereinafter, along with Lucy, referred to as Respondents).
6. From the annexures, I noted that the Applicant and the 1st Respondent have been involved in other litigation in the High Court Family Division **Civil Appeal No. E149 of 2021** and in Chief Magistrate's Court Family **Civil Case E12624 of 2021**. These two cases relate to the burial dispute.

7. The 1st Respondent consented to the Petition by the 3 Petitioners, whereas the Applicant has not filed any objection to the issuance of the Grant.
8. The issue for determination is whether the Court should strike out the Petition for Letters of Administration filed by the Petitioners.
9. The Petition was presented on 7th May, 2025 and a certified copy of death certificate dated 20th February, 2025 was presented alongside the petition.
10. From the Applicant's pleadings, this death certificate is alleged to be a forgery and investigations into the authenticity of the same are being handled by the Directorate of Criminal Investigations.
11. Whereas the Applicant has fronted issues that relate mostly to the proceedings in the burial dispute, the main focus of this determination should be to get a head start on the administration of the Estate.
12. I note that the investigations regarding the authenticity of the birth certificate are still ongoing and have not yet been concluded. Despite this, the pleadings

clearly indicate that all parties acknowledge that Samuel Mari Kihui died on 7th November, 2001. Following his death, the legal cases, apart from the Probate matter, were filed and adjudicated.

13. **Rule 7 (2) of the Probate and Administration**

Rules provide that a Petitioner shall exhibit a certified copy of a certificate of death of the deceased or such other written evidence of the death as may be available.

14. In accordance with the aforementioned provision and upon careful consideration of the pleadings presented to me, alongside the correspondence from the medical representative of Kiambu County Referral Level 5 Hospital and the admissions made by the parties involved, I conclude that the matters at hand pertain to an individual who is deceased. Consequently, it is my determination that the succession proceedings are appropriately before this Court.

15. **Section 47 of the Law of Succession Act and**

Rule 73 of the Probate and Administration Rules

grant a succession inherent powers to make such orders

as may be necessary for the ends of justice or prevent abuse of the Court process.

16. In the exercise of the inherent powers; I make the following orders: -

(a) The application dated 13th October, 2025 is dismissed, with no order as to costs;

(b) The Letter dated 4th February, 2025 from Kiambu County Referral Level 5 Hospital is accepted as written evidence of the death of Samuel Mari Kihiu under Rule 7 (2) of the Probate and Administration Rules and the Petition dated 21st February, 2025 is admitted;

(c) The D.C.I. shall proceed with the investigations and proceed as may be necessary in the available recourse, with a report to this Court upon conclusion of the investigations and/or action;

(d) The Petition was published in the Kenya Gazette on 18th July 2025. However, because these interlocutory proceedings were ongoing, the court finds it in the interests of justice to

extend the period for the filing of any objection to the Petition. Any party wishing to file an objection under succession law shall do so within 21 days.

(e) In the absence of any objection within those timelines, the grant shall be issued to the Petitioners.

(f) Mention on 2nd June, 2026 before the Deputy Registrar to confirm status and to take directions.

17. It is so ordered.

DATED, DELIVERED and SIGNED at NAIROBI through the Microsoft Teams Online Platform on this **4TH** day of **MAY, 2026.**

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Mr. Kamwendwa, Advocate for the Applicant

Mr. Gaya Advocate holding brief for Kurui Advocate for the
Petitioners

Lucy Wahito Thairu, 1st Respondent