



REPUBLIC OF KENYA



In re Estate of Tabitha Njoki Mwangi - Deceased (Probate & Administration E027 of 2024) [2025] KEHC 2490 (KLR) (Family) (28 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2490 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
FAMILY
PROBATE & ADMINISTRATION E027 OF 2024
KW KIARIE, J
FEBRUARY 28, 2025
IN THE ESTATE OF TABITHA NJOKI MWANGI- DECEASED**

BETWEEN

BENSON NYINGI D KAMAU PETITIONER

AND

MARGARET WAIHERA GITICHE 1ST CAVEATOR

ROSE WAMBUI MWANGI 2ND CAVEATOR

HARUN GACHOKI KARANI 3RD CAVEATOR

RULING

1. Harun Gachoki Karani, the 3rd applicant herein, moved the court through an application dated the 31st day of October 2024. The application is brought under sections 47, 76 & 86 of the [Law of Succession Act](#) and Rules 44 & 73 of the Probate and Administration Rules. He is seeking the following orders:
 - a. The Order made in this Cause on 31st October 2018 should be vacated and this Succession Cause reinstated.
 - b. That the grant of Letters of Probate issued to Benson Nyingi D. Kamau on 27th October 2014 be revoked having regard to the demise of the said Executor of the Estate of Tabitha Njoki Mwangi (deceased)
 - c. That the applicant, being a Creditor to the estate of Tabitha Njoki Mwangi (deceased), be appointed Administrator of the estate of the deceased either singly or jointly with any other person(s) this honourable court may deem appropriate.
 - d. The costs of this application are the costs of the cause.



2. The application is premised on the following grounds:
 - a. That the instant succession cause was on 31st October 2018 dismissed for want of prosecution.
 - b. Before the dismissal, a Grant of Probate of Written Will concerning the deceased's estate had been made to Benson Nyingi D. Kamau, who was the Petitioner in the instant cause.
 - c. That the said Benson Nyingi D. Kamau passed away on 31st December 2015.
 - d. That the said Benson Nyingi D. Kamau (deceased) had been appointed as sole executor of the deceased's estate, and he passed away before confirmation of the said Grant and before full and complete administration of the deceased's estate.
 - e. As things stand, the deceased's estate has no executor or administrator.
 - f. It is in the interest of justice that the instant Succession Cause be reinstated for the full and complete administration of the deceased's estate.
 - g. That the deceased herein, Tabitha Njoki Mwangi, was childless, and the applicants herein are step-children of the deceased.
 - h. That the applicants herein are suitable persons to be appointed as administrators of the deceased's estate.
3. The first and second applicants do not oppose the application in principle but differ from the third applicant on who should be appointed administrator.
4. All three applicants agree that Benson Nyingi D. Kamau, the previously appointed administrator, is deceased. This may explain why this matter was dismissed for want of prosecution. The court reinstated this succession cause on 17 May 2024. The grant made to Benson Nyingi D. Kamau is therefore revoked.
5. Section 66 of the *Law of Succession Act* states:

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

 - a. surviving spouse or spouses, with or without association of other beneficiaries;
 - b. other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
 - c. the Public Trustee; and
 - d. creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.
6. Section 39 (e) of the *Law of Succession Act* provides for other relatives in the absence of relatives who rank high in priority. In my opinion, these would include the first and the second applicants.
7. The third applicant's interest in the estate is limited to the property he purchased from Tabitha Njoki Mwangi (deceased). The grant will be issued to the three applicants jointly to ensure that Tabitha Njoki



Mwangi's estate is correctly cared for. This order compromises the applications dated 20 March 2023 and 31 October 2024.

8. Each party bear its costs.

DELIVERED AND SIGNED AT NYANDARUA THIS 28TH DAY OF FEBRUARY 2025

KIARIE WAWERU KIARIE

JUDGE

