



**In re Estate of William Rongora Ntimama alias William Ntimama (Deceased)
(Succession Cause 12 of 2017) [2025] KEHC 11803 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11803 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
SUCCESSION CAUSE 12 OF 2017
CM KARIUKI, J
JULY 31, 2025**

BETWEEN

SHARON LANOI SIYOMIT 1ST APPLICANT

SHAKAY DANNA MALKIA SANKETIA SIYOMIT 2ND APPLICANT

LUCY MUTHONI MWAURA 3RD APPLICANT

AND

SAMSON OMWANZA OMBATI EXECUTOR

AND

SANAPEI DEBORAH NTIMAMA BENEFICIARY

RULING

1. Introduction

1. Before the Court is a Summons dated 13th August 2024, brought under Sections 26, 27, and 28 of the *Law of Succession Act*. The application is filed by Sharon Lanoi Siyomit (1st Applicant), Shakay Danna Malkia Sanketia Siyomit (2nd Applicant), and Lucy Muthoni Mwaura (3rd Applicant), seeking reasonable provision from the estate of the late William Rongora Ntimama alias William Ntimama (deceased).
2. The 1st and 2nd applicants are the biological daughters of the late Francis Siyomit Ntimama, who was a son of the deceased. The 3rd applicant is the widow of the said Francis Siyomit Ntimama. They assert their claim under the principle of representation, stating that as direct dependants of the deceased's son, they are entitled to reasonable provision from the estate.
3. The applicants further seek an order varying the deceased Will dated 25th June 2015, to the extent necessary to provide for them. They argue that the Will did not make any provision for them despite



their dependency, and that in light of the circumstances under Section 28 of the [Law of Succession Act](#), it would be just and equitable for the Court to make provision in their favour.

4. The application is supported by the affidavit of the 1st applicant, Sharon Lanoi Siyomit, and is based on additional grounds to be presented at the hearing.
5. The application is supported by the sworn affidavit of Sharon Lanoi Siyomit, the 1st applicant, on 13th August 2024. She deposes that she and the 2nd applicant, Shakay Danna Malkia Sanketia Siyomit, are daughters of the late Francis Siyomit Ntimama, a son of the deceased testator William Rongora Ntimama, while the 3rd applicant, Lucy Muthoni Mwaura, is the widow of the said Francis.
6. The deponent avers that the deceased left behind a written Will dated 24th June 2015, in which he appointed Samson Omwanza Ombati as the executor. The Will was subsequently probated, and a certificate of confirmation of grant was issued. However, the Will made no provision for their late father nor for his dependants (the applicants herein).
7. The applicants claim under the principle of representation, asserting that the estate should have made reasonable provision for the deceased's son, Francis, and by extension, his immediate dependants. The affidavit lists various properties bequeathed to other family members, but none to their late father.
8. The deponent also raises concern regarding an arbitration clause in the Will and states that a letter was written to the executor seeking resolution, but no response was received. Relying on the advice of counsel, she believes the matter falls squarely under the court's discretion under Sections 26, 27, and 28 of the [Law of Succession Act](#), and that the dispute is not arbitrable.
9. The applicants pray that the court varies the Will to provide for them reasonably from the share that would have devolved to their late father.

The response

10. The Executor, Samson Omwanza Ombati, swore a Replying Affidavit on 3rd April 2025 in opposition to the Applicants' Summons for Provision of Dependants dated 13th August 2024. He avers that he is the duly appointed executor of the Will of the late William Rongora Ntimama and is well conversant with the circumstances of the estate.
11. The Executor asserts that the deceased exercised valid testamentary freedom under Section 5 of the [Law of Succession Act](#), having been of sound mind and free to distribute his estate in any manner he deemed fit. He argues that the Applicants have acknowledged the validity of the Will, and their objection merely concerns its contents, which they did not challenge during the main succession proceedings.
12. He contends that the Applicants seek to unjustifiably interfere with the deceased's clear testamentary intentions, without sufficient legal or factual basis. He further argues that the Applicants have not demonstrated dependency on the deceased during his lifetime, nor disclosed any relevant financial needs, means, or resources, as required under Section 28 of the Act.
13. The Executor concludes that the Applicants have failed to meet the legal threshold for relief under Sections 26 to 28 of the [Law of Succession Act](#) and prays that the Court dismisses the Summons with costs, in deference to the express wishes of the deceased.

Interlocutory Application

14. The applicants, Sharon Lanoi Siyomit, Shakay Danna Malkia Sanketia Siyomit, and Lucy Muthoni Mwaura, have filed a Notice of Motion dated 4th April 2025 under Section 1A and 1B of the



Civil Procedure Act, and Order 40 Rules 1, 2, 3, and 4 of the Civil Procedure Rules, seeking urgent interlocutory relief in Succession Cause No. 12 of 2017.

15. The application is supported by a Supporting Affidavit sworn by the 1st Applicant, Sharon Lanoi Siyomit, on the same date.
16. The Applicants seek the following orders:
 - a. Certification of the application as urgent and hearing ex parte in the first instance.
 - b. A temporary injunction restraining the Executor (Samson Omwanza Ombati) and Beneficiary (Sanaipei Deborah Ntimama), their agents or assigns, from selling, alienating, transferring, or otherwise dealing with the estate property pending the hearing and determination of both this application and the main suit;
 - c. Costs of the application.
17. The grounds upon which the application is premised are as follows: That the applicants have filed a pending suit seeking reasonable provision from the estate of the late William Rongora Ntimama, under the principle of representation. The applicants are the widow and daughters of the late Francis Siyomit Ntimama, who was a son of the deceased but was left out of the will entirely. That the testator's last will and testament, dated 24th June 2015, distributed the entire estate to various beneficiaries, excluding the applicants' late father.
18. That the applicants have a legitimate and arguable claim before the court under Sections 26, 27, and 28 of the Law of Succession Act. That the applicants have now come to learn of imminent plans to sell or transfer key estate assets, which they argue will render their claim nugatory and cause irreparable harm. That, unless the court intervenes urgently, the intended transactions will frustrate the suit and prejudice their right to a fair hearing.
19. The Supporting Affidavit by Sharon Lanoi Siyomit reiterates these facts, lists the disputed properties, and affirms the urgency and necessity of preserving the status quo to safeguard the estate for fair adjudication.

The response.

20. In response to the application dated 4th April 2025, the Executor of the estate, Mr. Samson Omwanza Ombati, filed a replying affidavit sworn on 22nd May 2025 opposing the application in its entirety. He avers that he is the duly appointed Executor of the late William Rongora Ntimama's estate and is well-versed with the facts of the matter. He contends that the Applicants have not established a prima facie case with a likelihood of success to justify the grant of the temporary injunctions sought.
21. The Executor asserts that under Section 5 of the Law of Succession Act, the deceased had unfettered testamentary freedom to dispose of his estate as he wished, having been of sound mind and of majority age at the time of making the Will. He notes that the Applicants have acknowledged the existence and validity of the Will and do not challenge it directly; rather, their grievance lies in the contents of the Will, which, in his view, is not a valid ground for disturbing the testamentary disposition.
22. He further deposes that the Applicants do not qualify as dependants within the meaning of the Law of Succession Act, and that they have failed to meet the legal threshold for an order of provision under Sections 26 to 28 of the Act. The Executor highlights that the Certificate of Confirmation of Grant was issued on 19th July 2017 and that the estate has since been fully administered and distributed in accordance with the Will. As such, there is no remaining property from which any further provision can be made to the Applicants.



23. Additionally, he argues that the pending summons for provision are statute-barred, having been filed more than eight years after the grant was confirmed and the estate distributed. He contends that the Applicants were fully aware of the deceased's death, which was widely publicized given his public stature, and yet they made no attempt to participate in the succession proceedings or lodge any objection or claim in due time.
24. The Executor also questions the Applicants' assertions regarding their relationship to the deceased, particularly the claim that the late Francis Siyomit was a son of the deceased. He notes that no credible evidence has been presented to establish marriage or paternity in this regard.
25. Moreover, the Executor submits that he has no intention or capacity to interfere with the deceased's estate, having discharged his duties in full. He argues that it is therefore impractical and unnecessary to issue injunctions against him, as there are no pending responsibilities or assets under his control.
26. He concludes that the Applicants have failed to demonstrate any entitlement to the provision sought and maintains that the balance of convenience favours upholding the express wishes of the deceased as stated in his Will. He urges the Court to dismiss the application with costs, as it lacks merit and is brought too late in the day to disturb a fully administered estate.

Directions of the court

27. The applications were canvassed by way of written submissions.

Applicants' Submissions

28. The Applicants submit that they are entitled to reasonable provision from the estate of the deceased, William Rongora Ntimama, under Sections 26, 27, and 28 of the *Law of Succession Act* (Cap. 160). They bring the application in their capacity as dependants under the principle of representation enshrined in Section 41 of the Act, as their deceased father was a son of the testator but was completely omitted from the will dated 25th June 2015.
29. The Applicants assert that they have locus standi to seek provision from the estate. They argue that since their father, a son of the deceased, was not provided for in the will and had predeceased the testator, they stand in his shoes and are entitled to inherit by virtue of Section 41, which allows for the representation of a deceased child's interest by their own children. They cite the case of *Re Estate of Luka Modole (Deceased)* [2020] eKLR, where the High Court held that children of a deceased son could benefit under Section 41 by way of representation. The court emphasized that the law seeks to maintain equality among children of the deceased and to ensure that grandchildren do not suffer discrimination when their parent predeceases the testator. The Applicants also rely on *Re Estate of Phyllis Muthoni Minoti (Deceased)* [2019] eKLR, where the court observed that the children of a deceased son have a right of representation in the estate of their grandfather, where their own father was not provided for.
30. On the issue of testamentary freedom, the Applicants concede that Section 5 of the *Law of Succession Act* allows a person to dispose of their estate by will. However, they submit that such freedom is not absolute and is subject to the limitations imposed by Section 26, which allows the court to intervene where a will fails to make reasonable provision for a dependant. In support of this position, the Applicants cite: *Kamene Ndolo v George Matata Ndolo* [1996] eKLR, where the Court of Appeal held that testamentary freedom must be exercised subject to statutory duties and that courts may interfere where a testator unjustly excludes a dependant. *Erastus Maina Gikunu v Godfrey Gikunu & 2 others*



- [2019] eKLR, where the court emphasized that while a person may dispose of their property by will, they cannot do so to the detriment of dependants who were entitled to reasonable provision.
31. The Applicants argue that they meet the definition of “dependants” under Section 29 of the Act as the widow and children of a son of the deceased. They submit that although their late father may have been an adult, he was nonetheless a child of the deceased, and his widow and children remain part of his lineage, entitled to consideration under Section 41.
 32. They further urge the court to consider the factors set out in Section 28 of the Act, including: Their financial needs; Their lack of means and modest financial situation; The size of the deceased’s estate, which is substantial; The absence of any evidence of advancement or prior settlement given to their late father; The non-disclosure of any justification for his exclusion from the will; And the fact that they have no other expectation of inheritance or support.
 33. The Applicants submit that the omission of their father was likely not intentional but may have arisen from family dynamics or estrangement, none of which justifies disinheritance under the law.
 34. On the issue of timing and procedure, the Applicants respond to the Executor’s contention that they failed to object during the confirmation of the grant. They submit that they were not involved in the probate process, and hence could not have participated. They rely on the authority of *Re Estate of Njoroge Gachucha (Deceased)* [2020] eKLR, where the court held that an application under Section 26 may be brought even after the confirmation of the grant, especially where the Applicants were not part of the original process and seek reasonable provision.
 35. The Applicants conclude that: The deceased had a duty to make reasonable provision for all his dependants, including the lineage of his deceased son. The court has power under Section 28 to vary the will to accommodate just and equitable provision for them. The executor has failed to demonstrate any conduct or advancement disentitling them to such provision.
 36. They therefore pray that the Court grants the following reliefs:
 - a. A finding that they are dependants of the deceased.
 - b. A declaration that no reasonable provision was made for them under the will.
 - c. An order varying the will dated 25th June 2015 to provide for them.
 - d. Costs of the application be provided for.

Respondent’s Submissions

37. The Respondent, as Executor of the Will of the deceased William Rongora Ole Ntimama, opposes the Applicants’ Summons dated 13th August 2024 for provision as dependants under Section 26 of the *Law of Succession Act* (Cap. 160). He submits that the application is legally deficient, procedurally time-barred, and factually unsupported.
38. The deceased passed away on 1st September 2016, having left behind a valid Will dated 24th June 2015, which comprehensively provided for his chosen beneficiaries—nine in total, including his wife, children, and grandchildren. The estate was fully administered and distributed in accordance with this Will by 2017, and the succession proceedings were concluded.
39. The Respondent emphasizes that the Applicants’ attempt to now reopen the estate eight years later constitutes a gross abuse of the court process.



40. The Respondent contends that the Applicants do not qualify as dependants within the meaning of Section 29(b) of the *Law of Succession Act*. They were neither maintained by the deceased immediately prior to his death nor recognized as part of his family. Citing *Re Estate of John Musambayi Katumanga (Deceased)* [2014] eKLR, the Respondent emphasizes that grandchildren must prove actual dependency. Mere biological relationship is insufficient. Similarly, in *Sarah Kanini Thigunku v Elizapan Njuki Thigunku* [2016] eKLR, the Court held that a party must show actual maintenance by the deceased immediately before death. The Respondent further refers to *Re Estate of Abdulkarim Chatur Popat* [2018] eKLR, where the Court declined to interfere with a will in the absence of evidence of dependency, affirming that testamentary freedom should only be overridden in clear and compelling cases. In this matter, the Applicants: Were neither acknowledged by the deceased, nor supported by him during his lifetime, nor mentioned in his Will. Accordingly, their claim fails
41. The Respondent further submits that the Applicants have failed to comply with the statutory requirements under Section 28 of the *Law of Succession Act* and Rule 45(2) of the Probate and Administration Rules. Specifically, they have not provided any affidavit evidence or documentary material addressing: Their capital or income (past, present, or future), their existing or future needs, whether the deceased made any gifts or advancements to them, the conduct of their late father in relation to the deceased, or the comparative situation of other beneficiaries. In *Re Estate of Abdulkarim Chatur Popat (2018)* eKLR, the Court held that the onus is on the Applicant to present clear and satisfactory evidence as to the criteria under Section 28, failing which the court is unable to make a reasoned order. The Respondent submits that the Applicants' pleadings are bare, speculative, and unsupported by the evidence, and thus do not warrant judicial intervention.
42. The Respondent relies on Section 30 of the *Law of Succession Act* and Rule 45(2) of the Probate and Administration Rules, which jointly provide that an application for provision must be brought before confirmation of the grant. He cites *Re Estate of Samuel Mburu Njoroge (Deceased)* [2006] eKLR, where the court declined to entertain a similar application made five years after confirmation, holding that the law does not provide for an extension of time and that delay amounts to acquiescence. In this case, the Grant of Probate was confirmed on 19th July 2017. The Applicants waited 8 years to file their application. The estate has been fully distributed, and there are no remaining assets to vary. The Respondent submits that the Applicants' delay is inexcusable, and the application is an afterthought that cannot revive an already concluded succession.
43. The Respondent also challenges the Applicants' standing based on lack of proof of relationship with the deceased. While the 1st and 2nd Applicants claim to be granddaughters, and the 3rd Applicant the widow of the deceased's son, Francis Siyomit, the Will does not recognize Francis as a son. Citing *E.M.M. v I.G.M. & Another* [2014] eKLR and *Kimani Mathenge Muriuki v Patricia Muriuki* [HC Succession Cause No. 976 of 1994], the Respondent stresses that mere assertion is not proof. The burden lies with the claimants to demonstrate—on a balance of probabilities—both marriage and paternity, which they have failed to do. The absence of any documentary evidence to substantiate the familial relationship further discredits the Applicants' claims.
44. In summary, the Respondent submits that: The Applicants are not dependants as defined by law; They have not satisfied the threshold under Section 28; The application is time-barred and legally incompetent under Section 30; There is no proof of their relationship to the deceased; The estate has been fully distributed, rendering the application moot and untenable. Accordingly, the Executor prays that the Summons dated 13th August 2024 be dismissed in entirety with costs, and that the Court upholds the Will and the final distribution as a valid expression of the deceased's intentions.



Analysis And Determination.

Issues for Determination

45. The Court is called upon to determine:
 - a. Whether the Applicants qualify as dependants under Section 29 of the *Law of Succession Act*.
 - b. Whether the deceased made reasonable provision for the Applicants under his Will.
 - c. Whether this Court can and should vary the Will under Section 28.
 - d. Whether the Application is time-barred or otherwise procedurally defective.
 - e. Whether the Applicants have established a prima facie case for injunctive relief.

A. Legal Standing and Dependency

46. The Applicants claim standing through the principle of representation under Section 41, asserting they are the widow and daughters of the deceased's predeceased son. They rely on *Re Estate of Luka Modole* (2020) eKLR and *Re Estate of Phyllis Muthoni Minoti* (2019) eKLR, where courts held that grandchildren can inherit by representation where their parent was a child of the deceased.
47. However, the Executor disputes both paternity and dependency. He argues that the deceased never acknowledged Francis Siyomit as a son, nor the Applicants as dependants. He relies on *Re Estate of John Musambayi Katumanga* (2014) eKLR, which emphasized that biological relationship alone does not establish dependency.
48. This Court finds that while the Applicants assert a biological relationship to the deceased, no sufficient documentary or sworn evidence—such as birth, marriage, or acknowledgment records—was presented to prove such lineage. Without proof of dependency or familial recognition, they fall outside the statutory definition under Section 29 of the Act.

B. Testamentary Freedom vs. Reasonable Provision

49. It is trite law that under Section 5 of the *Law of Succession Act*, a person may dispose of their property freely by Will. However, this freedom is not absolute. Section 26 empowers the court to intervene if a dependant is unfairly left out.
50. The Applicants cite *Kamene Ndolo v George Matata Ndolo* [1996] eKLR and *Erastus Maina Gikunu v Godfrey Gikunu* [2019] eKLR, affirming that testamentary freedom must yield to the duty to provide for dependants.
51. However, for this discretion to be invoked, dependency must first be proven. In *Re Estate of Abdulkarim Chatur Popat* [2018] eKLR, the Court refused to disturb a will absent clear evidence of dependency and need. This reasoning applies here. The Applicants failed to furnish information required under Section 28—such as means, income, conduct, needs, or any gifts made by the deceased to their father.

C. Timeliness and Delay

52. The Grant was confirmed on 19th July 2017. The estate was fully distributed thereafter. The Applicants filed their Summons on 13th August 2024—eight years later. The Respondent cites *Re Estate of Samuel Mburu Njoroge* (2006) eKLR and Section 30 of the Act, which require that applications for provision be made before confirmation of the grant. While there is judicial authority



allowing late claims (see *Re Estate of Njoroge Gachucha (2020) eKLR*), such leniency is reserved for cases where the Applicants were unaware or excluded from the process. The Applicants in this matter have not shown that they were unaware of the succession proceedings or unable to participate.

53. Therefore, the delay is inexcusable, and the application is time-barred both in equity and procedure.

D. Injunctive Relief

54. The prayer for interlocutory injunctions is predicated on the existence of pending or undistributed assets. However, the Executor has deponed—and it is not controverted—that the estate has already been fully administered. *Giella v Cassman Brown [1973] EA 358* outlines that a prima facie case must be established, and irreparable harm shown. The Applicants have failed to demonstrate either.

55. Moreover, injunctive orders cannot issue in respect of property no longer vested in the estate. There is no evidence that the Executor or any party is currently dealing with estate assets improperly. The prayer is thus overtaken by events and not tenable.

Conclusion

56. Upon careful analysis of the pleadings, affidavits, and submissions of both parties, and in light of the authorities cited, the Court finds that:

57. The Applicants have not proven dependency or familial relationship within the meaning of Section 29.

58. The Will of the deceased was lawfully executed, probated, and fully implemented, with no evidence of impropriety.

59. The Applicants' Summons is time-barred, lacking justification for the prolonged delay;

60. The interlocutory application is unsustainable as no prima facie case or imminent harm has been established.

61. No legal or equitable basis exists for varying the deceased's Will.

Orders

- i. The Summons dated 13th August 2024 is hereby dismissed in its entirety.
- ii. The Notice of Motion dated 4th April 2025 is also dismissed.
- iii. Costs of both applications shall be borne by the Applicants.
- iv. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS
31ST DAY OF JULY 2025**

CHARLES KARIUKI

JUDGE

