

KENYA / JUDGMENT

In re Estate of the Late Jamin Inyanda Kadambi alias Inanda (Deceased) [2026] KEHC 7296 (KLR)

[2026] KEHC 7296 (KLR)

COURT

High Court

BEFORE

RN Nyakundi

CASE / FILE NUMBER

Succession Cause 116 of 2021

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REPUBLIC OF KENYA IN THE HIGH COURT AT VIHIGA SUCCESSION CAUSE NO 116 OF 2021 IN THE MATTER OF THE ESTATE OF THE LATE JAMIN INYANDA KADAMBI ALIAS JAMIN INANDA (DECEASED) MARGRET MAKUNGU NDORI.....1ST PETITIONER BATROBA MIDEVA.....2ND PETITIONER FLORENCE NGOSEYWE.....3RD PETITIONER Coram: Before Justice R. Nyakundi
M/s Emily & Associates Advocates

RULING

1. What is pending for determination by this Honourable Court is Summons for Confirmation of Grant dated 2nd February 2026 in which the Petitioners are seeking the following orders: -
2. *That the Grant of Letters of Administration intestate issued to Batroba Mideva Iriani in this matter on 10th November 2025 be confirmed.*
3. The Summons is supported by an Affidavit dated 2nd February 2026 sworn by Batroba Mideva Iriani, the 2nd Petitioner/Administrator who deponed as follows: -
4. *That I am one of the appointed Administrators of the estate of the deceased.*
5. *That the deceased was survived by the following: -*
6. *Margaret Makungu Ndori (now deceased)*
7. *Matroba Mideva*
8. *Florence Ngoseywe*

9. *That the 1st Petitioner died leaving no surviving child or anybody claiming through her and whereabouts of the 3rd Administrator are unknown.*
10. *That I have served the proceedings in this case through newspapers but the 3rd Petitioner has never responded and I do not know whether she is alive or not.*
11. *That no estate duty is payable in respect to the estate.*
12. *That the estate of the deceased is comprised of Land Parcel No. KAKAMEGA/KEGOYE/335 and KAKAMEGA/KEGOYE/30.*
13. *That the identification of shares of all person's beneficially entitled to the said estates have been ascertained and determined as follows: -* ***LR NO/KAKAMEGA/KEGOYE/130*** | | | | --- | --- | | ***NAME*** | ***SHARES (Ha)*** | | ***Batroba Mideva Iriani*** | ***Whole*** | | ***Margaret Makungu Ndori*** | | ***Florence Ngoseywe*** | | ***LR NO/KAKAMEGA/KEGOYE/30*** | | | | --- | --- | | ***NAME*** | ***SHARES (Ha)*** | | ***Batroba Mideva Iriani*** | ***Whole – In trust for 1st Petitioner*** | | ***Margaret Makungu Ndori*** | | ***Florence Ngoseywe*** | |
1. *That the mode of distribution has taken into account the interests of the two surviving beneficiaries.*
2. *That it is important that the Grant be confirmed to enable me complete the administration of the estate.*

Analysis and Determination.

1. I have carefully considered the Summons for Confirmation of Grant, the supporting Affidavit together with the entire court record. The law governing confirmation of grants is principally Section 71 of the Law of Succession Act which provides: - ***[71]. Confirmation of Grants*** ***(1)** After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.* ***(2)** Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may-*
 1. *if it is satisfied that the grant was rightly made to the Applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or*
 2. *if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of Sections 56 and 66 of this Act inclusive, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be administered; or*
 3. *order the Applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or*

4. *postpone Confirmation of the Grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case: -*
Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares.
1. Further, Rule 40(4) of the Probate and Administration Rules provides that; *‘‘Where the deceased has died wholly or partially intestate, the applicant shall satisfy the court that the identification and shares of all persons beneficially entitled have been ascertained and determined.’’*
1. The duty of the Court at the confirmation stage is therefore to satisfy itself that all beneficiaries of the estate have been identified, their respective shares ascertained and that the proposed distribution is lawful and fair in the circumstances. Further, the principle purpose of confirming the grant is to pave way for the distribution of assets. The provisions of section 71(2)(1) states that *‘‘the court be satisfied as to whether the Administrator had properly ascertained all the person’s beneficiary entitled to share in the estate and properly identified the share due to them’’*. Furthermore, the section requires that where a Grant of Letters of Administration has been made previously, the court must be satisfied that the person to who the grant was made was properly appointed and is fit and willing to administer the estate according to the law before confirming the grant. By dint of these provisions in the Law of Succession Act, the court is required to confirm a grant if satisfied that the grant was rightly made and the Administratrix will administer the Estate in accordance with the law, and to refuse/decline to confirm or issue a Confirmed Grant to some other person(s) if so warranted by the circumstances.
2. A perusal of the proceedings indicated that at some point, the learned Judge, PJ Otieno J, inquired on whether the late 1st Petitioner had left behind any children and it came out that she had left behind five (5) children. The court directed the 2nd Petitioner to swear an affidavit indicating why the said children should not be included in the distribution. A perusal of the record herein did not show whether the Petitioner filed the said affidavit. Going further when the matter was heard by the learned Judge, Kamau J, she inquired whether a death certificate had been filed as against the allegation that the 1st Petitioner had died. A perusal of the record also showed that there was no such death certificate filed. To the mind of this court, there was a lot that was left to be desired, however, the 2nd Administrator swore an affidavit indicating that she had done substituted service upon the 1st and 3rd Administrators through the newspapers and no response had arisen until to date. With this, I make reference to section 118 A of the evidence Act which provides as follows: - ***118A. Presumption of death*** *Where it is proved that a person has not been heard of* ***for seven years*** *by those who might be expected to have heard of him if he were alive, there shall be a rebuttable presumption that he is dead.*

1. The upshot of that provision is that, the doctrine of presumption of death is applicable in Kenya. There is however a statutory threshold that must be satisfied before the doctrine can be invoked. A party seeking to rely on the provision must call evidence that is both sufficient and credible in order to create a rebuttable presumption that in fact the missing person could be dead in the absence of any contradictory evidence that the absentee person could be alive. The checklist comprises of three (3) basic facts the proof of which is on a balance of probability: -
 2. Physical absence
 3. Not being heard of for seven (7) years
 4. By persons who would have been likely to hear from the absentee
5. I take note that the absence for the seven years' period must not be voluntary, excusable, induced or capable of being explained except by an inference that the missing person is dead. Additionally, the applicant must demonstrate with proof that steps and due diligence was exercised to search or trace the absentee person without success. Where there are reasons for a person to voluntarily vanish, then some courts have considered that fact as incapable of allowing the presumption from rising.
6. Further on the legislative framework, Rule II of the Probate and Administration Rules made under the Law of Succession Act serves as the procedural law and provides as follows: - **"An application for an order presuming the death of a person of whose death there is no sufficient written evidence and whose estate a grant is sought shall be made by summons to the court and shall be supported by an Affidavit setting out the grounds of the Application."*
 1. The probable implication of the legal provision is that, an Application seeking among other things, a declaration of presumption of death of a named missing person shall be made by summons to the High Court. Whereas the Civil Procedure Act and the rules made there-under remains the procedural law in civil matters, it is the Probate and Administration Rules that expressly makes reference to the specific and/or proper application to be made in a cause seeking a declaration of presumption of Death.
 2. In the case of **Re Application for Presumption of Death of Enos Omondi Nyamanga [2024] KEHC 8088 (KLR)**, the Court held as follows: - **"For the foregoing reasons, I am satisfied that the applicant has demonstrated by credible and reliable evidence that the subject disappeared on or about 15th Day of March, 1993 while at Mombasa and has to date not been in touch with his close family members. This means that the subject has been missing for the last about 31 years and all efforts to trace his whereabouts have been unsuccessful. If the subject was alive, it is expected that he would have attempted to contact at least members of his nuclear family which he has not done to date. Accordingly, it is my finding that the applicant has met the threshold set out in Section 118A of the*[*Evidence Act*](<https://new.kenyalaw.org/akn/ke/act/1963/46>)*by providing evidence which raises a presumption that the subject is dead.*"*

1. In the instance case, the Administrator has not sufficiently discharged the burden of proof required in law to warrant a presumption of death in respect of Florence Ngoseywe. Whereas the Administrator avers that the whereabouts of the said beneficiary and administrator are unknown and that efforts were made through newspaper advertisements to trace her, no substantive evidence has been placed before this Court demonstrating the nature, extent and duration of the disappearance as contemplated under the law. The Court notes that no police abstract, report from the relevant authorities, affidavit evidence from relatives or persons acquainted with the missing person, nor evidence establishing prolonged absence for a statutory or reasonable period has been tendered.
2. Under Sections 107, 108 and 109 of the Evidence Act, the burden of proof lies upon the person asserting the existence of a fact. Further, the presumption of death is not automatic merely because a person cannot be traced; rather, the Court must be satisfied through cogent and credible evidence that exhaustive efforts have been undertaken to ascertain the whereabouts of the missing person and that the circumstances justify such a declaration. In the present case, the material placed before the Court falls short of the legal threshold necessary to invoke the presumption of death and consequently, the Court cannot conclusively find that Florence Ngoseywe is deceased.
3. Taking the above in mind, **Rule 73 of the Probate and Administration Rules**, preserves the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. In view of the foregoing and considering the peculiar circumstances of this matter, this Court is persuaded that the interests of justice would best be served by allowing the surviving Administrator to continue administering the estate while holding the estate properties in trust for the interests of the other beneficiaries pending clarification of the status of the absent beneficiary and the deceased beneficiary. Trusts are recognized under succession law particularly where circumstances require preservation and protection of beneficiaries' interests. Such an arrangement ensures continuity in administration while safeguarding the rights of all persons beneficially entitled to the estate.
4. The Court is therefore satisfied that the Grant ought to be confirmed subject to conditions necessary to preserve the interests of all beneficiaries and to ensure compliance with the Probate and Administration Rules. Consequently, I make the following orders: -
5. *The Grant of Letters of Administration Intestate issued on 10th November 2025 to Batroba Mideva Iriani be and is hereby confirmed.*
6. *That the 2nd Petitioner Batroba Mideva Iriani be and is hereby appointed as the Administrator of the Estate of Jamin Inyanda Kadambi Alias Jamin Inanda (Deceased).*

7. *That the Administrator herein, Batroba Mideva Iriani shall within sixty (45) days file the necessary application and requisite forms under the Probate and Administration Rules for purposes of gazettment and regularization of her appointment as the sole administrator of the intestate estate of the deceased.*
8. *The 2nd Petitioner/Administrator shall within thirty (30) days from the date hereof file before this Court the Death Certificate of Margaret Makungu Ndori or such other satisfactory proof of death.*
9. *That a Certificate of Confirmation of Grant shall be issued with the following distribution matrix: -* |||| --- | --- | --- | | **ASSET** | **BENEFICIARY** | **SHARES** | | LR No Kakamega/Kegoye/335 | *Batroba Mideva Iriani* | Whole (To hold in trust) | | *Margaret Makungu Ndori* | | *Florence Ngoseywe* | | LR No Kakamega/Kegoye/30 | *Batroba Mideva Iriani* | Whole (To hold in trust) | | *Margaret Makungu Ndori* | | *Florence Ngoseywe* |
1. *That the Administrator herein Batroba Mideva Iriani shall hold the properties in trust for herself, the estate of Margaret Makungu Ndori and Florence Ngoseywe.*
2. *Upon compliance with the above orders c & d, the Administrator shall proceed with administration of the estate strictly in accordance with the law and in trust for all beneficiaries.*
3. *There shall be a Status Conference on* ***30th June 2026*** *to confirm compliance with the aforesaid orders.*
4. *There shall be no orders as to costs this being a family matter.*
5. Orders accordingly. **DATED, SIGNED AND DELIVERED VIA EMAIL AND CTS AT VIHIGA THIS 28TH DAY OF MAY 2026 R. NYAKUNDI JUDGE**

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