

In the Matter of the Estate of Eric Gowa Nyasulu (Deceased) and In the Matter of an Application for the Determination of Parentage by Slyvia Gowa Nyasulu of (CGN, ULGN, JN and EAGN) Minors for Purposes of Succession and Inheritance

Summary

Court:	High Court of Malawi
Registry:	Family and Probate Division
Bench:	Honourable Justice Madalitso Khoswe-Chimwaza
Cause Number:	Probate Cause No. 268 of 2024 (Miscellaneous Application Number 1 of 2025)
Date of Judgment:	July 09, 2025
Bar:	appellant unrepresented respondent unrepresented

The Applicant applied to the High Court, Lilongwe District Registry, Family and Probate Division, for an order to determine the parentage of four minors through Deoxyribonucleic Acid (DNA) testing for the purposes of succession. The

deceased died intestate in November 2024, purportedly survived by four children born out of wedlock to four different mothers. The Applicant, being the mother of the deceased, challenged the paternity of these children, asserting that scientific test was necessary to ensure the rightful distribution of the estate to genuine beneficiaries. The Respondents, acting as litigation guardians, opposed the application by producing birth certificates and photographic evidence of the deceased's involvement in the children's lives. They argued that the birth certificates constituted sufficient proof of paternity and that the Applicant was estopped from questioning parentage after the deceased had accepted the children during his lifetime and she had previously acknowledged them as grandchildren.

The Court was called upon to decide whether the existence of birth certificates and fatherly conduct precluded an order for DNA testing, and whether the costs of such tests should be borne by the Applicant or the estate.

In allowing the Application, the Court held that while birth certificates serve as *prima facie* evidence of parentage under the National Registration Act, they are not conclusive and can be rebutted by scientific evidence. The Court further determined that the common law presumption of paternity (***pater est quem nuptiae demonstrant***) was inapplicable as the deceased was not legally married to the mothers, hence DNA testing was necessary to paternity. It reasoned that DNA testing is a reasonable limitation of the rights to dignity and privacy in inheritance disputes and represents the most effective method to resolve uncertainty, serving the best interests of both the children and the proper administration of the estate. Consequently, the Court ordered that DNA

samples be extracted from the four minors and the Applicant for comparison. The Court refused a request for the exhumation of the deceased's body as it was unnecessary due to the presence of the deceased's mother who shared DNA with the deceased. The Court further directed that the expenses for the DNA tests be borne by the estate, as the determination of beneficiaries is a legitimate and essential expenditure for its administration . Each party was ordered to bear its own costs for the application.