



**In re Estate of Damaris Nduta Gitau (Deceased) (Succession Cause
444 of 2011) [2022] KEHC 14406 (KLR) (Family) (25 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14406 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 444 OF 2011
AO MUCHELULE, J
OCTOBER 25, 2022**

BETWEEN

JACKLINE KABIBI NJERI INTENDED APPLICANT

AND

RACHAEL EUNICE NJERI GITAU 1ST APPLICANT

LINET WANJIRU MUNGAI 2ND APPLICANT

AND

EDWIN MUCHENE GITAU RESPONDENT

RULING

1. I have read through this file. It is in respect of the estate of Damaris Nduta Gitau who died intestate on November 17, 2010 and left a substantial estate which, since 2011 when the cause was filed, has not been distributed. The grant of letters of administration intestate was issued to the respondent Edwin Muchene Gitau on February 15, 2018, and there is no evidence that it has been confirmed. On October 31, 2018 the respondent applied to have the grant confirmed, but it does appear that he did not prosecute the application. This has allowed all manner of applications to be filed by the beneficiaries seeking to derive benefit from the estate. They believe that the estate is substantially benefitting the respondent alone.
2. The present application dated September 25, 2020 by the applicants Rachael Eunice Njeri Gitau and Linet Wanjiru Mungai essentially seeks their appointment as administrators of the estate in place of the respondent whom they allege is intermeddling with the estate and is wasting it. The application did not receive a response from the respondent.



3. In the application dated June 2, 2022 it was indicted that Rachael Eunice Njeri Gitau had died. It was sought that the daughter Jackline Kabibi Njeri does replace her in the proceedings. Again the application was not defended.
4. It is my considered view that, noting the complaints over a long time that the respondent has refused to abide by the court orders that have been issued, the enduring solution to this dispute shall be to have the application filed on October 31, 2018 seeking the confirmation of the grant to be heard and determined. It is during the hearing of the application that the extent of the deceased's estate shall be determined, the beneficiaries of the deceased's estate shall be ascertained and the court will distribute to the respective beneficiaries their share of the estate. It was never the intention of the law that a succession cause that has been filed does linger on in court with the parties bringing all manner of peripheral applications, without confronting the elephant in the room; the sharing of the deceased's estate to the respective beneficiaries so that they can move on with their lives.
5. That being the case, I direct that all the parties in this case do within 30 days file and serve a response to the respondent's application of October 31, 2018 to confirm the grant. The respondent shall within 21 days of service file any further affidavit. The application shall be heard orally, in open court, on February 13, 2023.
6. I have given these orders and directions under section 47 of the *Laws of Succession Act* (cap 160) and rule 73 of the *Probate and Administration Rules*.
7. Costs shall be in the cause.

DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 25TH DAY OF OCTOBER 2022

A.O. MUCHELULE
JUDGE

