



In re Estate of Gladys Wambui Muchai (Deceased) (Succession Cause E031 of 2020) [2025] KEHC 163 (KLR) (14 January 2025) (Ruling)

Neutral citation: [2025] KEHC 163 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE E031 OF 2020**

HM NYAGA, J

JANUARY 14, 2025

IN THE MATTER OF ESTATE OF GLADYS WAMBUI MUCHAI (DECEASED)

BETWEEN

DANIEL MBATIA MUCHAI 1ST APPLICANT
DANIEL MBATIA MUCHAI 2ND APPLICANT
EDWARD MUIRURI MUCHAI 3RD APPLICANT
EDWARD MUIRURI MUCHAI 4TH APPLICANT
VERONICA WARINGA MUCHAI 5TH APPLICANT
VERONICA WARINGA MUCHAI 6TH APPLICANT

AND

LUCY WAIRIMU MUCHAI 1ST RESPONDENT
LUCY WAIRIMU MUCHAI 2ND RESPONDENT

RULING

1. The Application for determination is the one dated 13/12/2023 and it seeks the following orders:-
 - a. That the name of Lucy Wairimu Muchai one of the Administrator be removed from the Grant of Administration dated 19.6.2023.
 - b. That the name of Lucy Wairimu Muchai, be removed from the Rectified certificate of confirmation of Grant dated 19.6.2024.
 - c. That the names of the Applicants remain as the Administrators of the estate.
 - d. That the cost of the application be costs in the cause



2. The application is supported by the grounds set out on its face and the affidavit of Veronicah Waringa Muchai sworn on behalf of the other Applicants.
3. In a nutshell, the Applicants state that since being made a co-administrator, the Respondent has failed in her duty to diligently administer the estate. That she is deliberately stalling the distribution of the estate as per the rectification certificate of confirmation of a Grant in that she has continuously failed to attend family meetings without good reasons or excuse. That the Respondent has always wanted to work on her own without involving other family member. That she has without consent sold a property known as Market stalls for Kshs. 3.5 Million but informed her siblings that it was sold for just Kshs. 1.5 million thus retaining the extra Kshs. 2 million and getting another Kshs. 300,000/- when she shared out the Kshs. 1.5 million among the beneficiaries. That the Respondent withdrew Kshs. 80,000/- from the family account distributed Kshs. 4000/- to each beneficiary except one and retained Kshs. 36,000/-.
4. The applicants aver that it is the feeling of the other beneficiaries and the Applicants that the Respondent cannot be trusted to act in good faith in the distribution of the Estate.
5. The Respondent filed a replying affidavit on 20th June 2024, denying that she has deliberately frustrated the distribution of the estate. She avers that it is the 2nd Applicant who has frustrated her and has evidence that it is the Applicants who refused to join her as an account holder in the account that holds the family funds, leaving her in darkness as to how money is being spent. That she requested for virtual meeting but Applicants have insisted on her to physically travel to Nairobi for the meetings, which is expensive for her. She explains that the reason that she applied to become a Co-administrator was due to some injustices that were being meted on her siblings. That she declined to sign the transfer form for the property in question as the purchase price had not been agreed upon. That she questioned the sale of the land at Ruiru which was done before the Letters of Administration were issued and the purchase price that was declared, which was much lower than the valuation price of Kshs. 22 Million.
6. The Respondent further states that her requests to meet the purchaser of the Ruiru property was not acted upon hence, she wrote to the purchaser to stop further payments until the issue was resolved.
7. The Respondent further avers that she objected to the 2nd Applicant's claims for a refund of a sum allegedly for some structures he put up at Shabab and other refunds being made selectively to some administration. She denies ever withdrawing any money from an account as she has not been a signatory. She further states that the Applicants' application is borne out of her opposing opaque payments.
8. Directions were given that the application be canvassed by way of written submissions. The parties duly complied. I will not rehash them word for word. It suffices to state that I have looked at them and will where necessary, refer to them.
9. Before I delve into the issues for determination. I will give a brief background to the matter.
10. The grant of letters of administration was initially made to the following:-
 - a. Daniel Mbatia Muchai
 - b. Antony Mwangi Muchai
 - c. Edward Muiruri Muchai
 - d. Veronicah Waringa Muchai



11. Subsequently, the grant was confirmed by the court on 6th October 2022. The court directed, as per the parties wishes to sell all the immovable property and shares and then share the proceeds equally. The cash at Equity Bank was to be shared equally.
12. Vide an application dated 7th February 2023, the Respondent herein applied to be added as an administrator, upon the demise of Antony Mwangi Muchai. That application was allowed by a consent recorded in court on 19th June 2023. Six months later, the current application was filed by the other co-administrators in the estate.
13. The summons for revocation of the grant to the Respondent is premised primarily on the ground that the Respondent has failed to diligently play her role as a Co-administrator, thus frustrating the process. The Respondent denies the allegations.
14. Section 76, of the Law of Succession Act provides for the revocation of a grant. It states as follows:-

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

 - (a) that the proceedings to obtain the grant were defective in substance;
 - (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
 - (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
 - (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
 - (e) that the grant has become useless and inoperative through subsequent circumstances.”
15. For the court to grant the orders to remove an administrator it has to be shown that he/she has without good cause, failed to perform his or her duty as an administrator.
16. I have considered the Application and, in my view, the same fails to meet the threshold for the removal of the Respondent as an administrator. I will give my reasons.
17. For starters, there are sale agreements for certain properties forming part of the estate that were executed in February 2018, October 2019. The Petition for Letters of Administration herein was filed in 2020.
18. The grant was only confirmed on 6th October 2022. By law, an administrator cannot dispose of any immovable property prior to confirmation of a grant. Section 82 of the Act is to that effect and it reads as follows:-

“Powers of personal representatives



Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—

- (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;
- (b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:

Provided that—

- (i) any purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and
- (ii) no immovable property shall be sold before confirmation of the grant;”

19. It follows that any sale conducted prior to the confirmation of the grant on 6th October 2022 is null and void. The Respondent is thus entitled to question the sales that took place even if they were done by the beneficiaries.
20. It has been alleged that the Respondent sold a certain property, but the details of the actual sale were not presented. It is also alleged that she withdrew some Kshs. 80,000/- and failed to account for the same. The Applicants have not shown that they made the Respondent a signatory to the Account as per the consent order. It thus baffles me that they can now accuse her of withdrawing funds. In my view the applicants, as the signatories, who owe all the beneficiaries a duty to account for all the funds in that account from the time they accessed it.
21. The appointment of joint administrators is a way of providing checks and balances in the administration of the estate as a single administrator may decide to run with the powers and act alone. The appointment of joint administrators is also meant to avoid the scenario where a single administrator passes away and the parties have to seek a revocation of the grant and have another issued. In cases where there is more than administrator, there is continuity as provided for under section 81 of the Act.
22. After considering the matter, I am one of the view that the applicants have not met the threshold for the removal of the Respondent as an administrator. If anything, they are the ones who stand to be removed if they cannot account for the time they were administrators before the Respondent being made one. They cannot explain why since October 2022, they never moved to finalize the administration of the estate. They have to answer many questions including these raised by the Respondent herein.
23. Therefore, the application dated 13/12/2023 is dismissed but there shall be no orders as for costs.
24. To ensure that the matter is concluded soon, the court needs to make orders to that effect.
25. First, I direct that the 3 applicants move to comply with orders to make the Respondent a co-signatory to the bank account. This should be done in the next 30 days.
26. Secondly, the Applicants are to provide the Respondents and all other beneficiaries with a full statement of account in the said bank account and how the funds have been utilized since they became signatories. The same to be done in the next 30 days.
27. Thirdly, before any sale is undertaken, all the properties belonging to the estate are to be valued, the cost of which is to be met by the estate from the funds said to be in the account held by the administrators. This



should be done in the next 90 days. The valuation reports to be filed in court and the administrator to jointly agree on the purchase. If they cannot, any of them can seek leave of the court for that purpose.

28. All the proceeds of the sale(s) shall be deposited in the joint account and shall be distributed equally among all the beneficiaries.
29. For the avoidance of doubt it is hereby declared that the sale of any of the property belonging to the estate, including those known as House No EB25 Kahawa West and Ruiru Block 2/2505 conducted prior to the confirmation of the grant are null and void.
30. It is so ordered.

Signed and delivered (virtually) at Meru this 14th Day of January, 2025.

H. M. NYAGA,

JUDGE.

In the presence of:

Ms Soy for Gathera for Respondent

Mr Kinyanjui for Applicant

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