



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Peter Gathiru Rurigi (Deceased) (Succession Cause
2079 of 2011) [2025] KEHC 2566 (KLR) (Family) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2566 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2079 OF 2011
PM NYAUNDI, J
FEBRUARY 20, 2025
IN THE MATTER OF THE ESTATE OF PETER GATHIRU RURIGI (DECEASED)**

RULING

1. By Summons dated 8th April 2024 the Applicant seeks the following orders-
 1. Spent
 2. That the Honourable Court be pleased to issue an order to the Deputy Registrar, Family Division Nairobi to sign all the relevant transfer documents and any other necessary documents in respect of this matter on behalf of the administrators, Agnes Mwhaki Rurigi and Lucy Wambui Rurigi because they have refused / declined to sign.
 3. That the Honourable Court be pleased to issue an order of the Land Registrar Kiambu to effect transfer of land parcel Kiamba/ Kanunga/ 1241 (1 ¼ Acres) to David Munyua Rurigi, George Kariuki Rurigi And Michael Gathiru Rurigi without the production copies of ID and PIN certificates of the administrators Agnes Mwhaki Rurigi and Lucy Wambui Rurigi
 4. That costs of this Application be provided for.
2. The Application is supported by affidavit of Michael Gathiru Rurigi sworn on 8th April 2024. In the said affidavit he avers that a certificate of confirmation of grant was issued herein on 2nd February 2017 and 1¼ Acres of land parcel No. Kiambaa/ Kanunuga/ 1241 distributed to him along with his brothers; David Munyua Rurigi and George Kariuki Rurigi.
3. To date the Administrators have declined and or failed to transmit the estate in accordance with the Certificate of Confirmation of Grant. The challenge to confirmation of grant by application dated 24th July 2019 was dismissed by Hon Muchelule J. (as he then was) in his ruling dated 27th July 2022.
4. The Application is opposed by Mbugua Gitau, Waweru Gitau And John Kariuki Gitau, who have styled themselves as Objectors. They have filed grounds of opposition dated 7th June 2024 and Replying



affidavit sworn on 18th July 2024 by Mbugua Gitau. It is contended that the Application is incompetent and lacks merit.

5. The 'Objector' contends that he has lodged an appeal against the ruling delivered on 27th July 2022 vide Civil Appeal No. E580 of 2022. That the Appeal is pending before the Court of Appeal and that therefore the status quo should be maintained pending the determination of that appeal. It is further contended that there is no evidence that the Administrators have declined to execute the documents for the transmission of the Estate and that the Applicants have not applied for the revocation of the grant in any event.
6. Pursuant to the directions of the Court that the Application be canvassed via written submissions, the Applicants have filed submissions dated 8th October 2024 along with supplementary submissions dated 18th November 2024. The submissions of the 'Objectors' are dated 4th November 2024.
7. Both the parties recite the averments in their respective affidavits and have not cited any law or judicial precedent, there is no value in restating the submissions here.

Analysis and Determination

8. Having considered the pleadings and submissions and the relevant law, I discern the following as the issues for determination-
 1. Whether the transmission of the estate pursuant to confirmed grant issued on 2nd February 2017 should await the conclusion of Civil Appeal No. E580 of 2022?
 2. Who should pay costs of the Application?
9. In judgment delivered on 2nd February 2017, the court determined that the Applicants herein are beneficiaries of the Estate of the deceased and proceeded to distribute the estate allocating 1¼ acres of Land Parcel No. Kiambaa/ Kanunuga/ 1241 to the Applicant and his 2 brothers.
10. Attempt to revoke the grant by the Objectors was thwarted when the Court dismissed the Summons for revocation by its ruling dated 27th July 2022. The Objectors contend that they filed an appeal against this judgment.
11. They now seek to delay the transmission of the estate on account of an appeal filed. There is no application filed by the Appellant seeking stay of execution pending the determination of the appeal. The law is clear, Order 42 Rule 6 of the [Civil Procedure Rules](#) provides that:-
 - (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
12. In the circumstances the objectors challenge to the application has no feet upon which to stand and it collapses.



13. Section 83 (g) of the *Law of Succession Act* requires that Personal Representatives-

Within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than the continuing trust, and to produce to the court a full and accurate account of the completed administration.

14. The duty to ensure that the estate is distributed lies solely with the administrator, it is no defence to an application of this nature to state that there is no evidence that the Administrators have declined or failed to administer the estate. Indeed, once the grant is confirmed the clock begins to run and failure to complete administration within the statutory period exposes the Administrator to having the grant issued to them revoked, either on application or on the courts own motion.

15. As stated, the grant herein was confirmed on 2nd February 2017. I am prepared to accommodate the Administrators and find that they were unable to proceed with administration until the Court rendered its decision on 27th July 2022.

16. They did not file a response to this application and therefore there is no explanation as to why the estate has not been transmitted to the beneficiaries in accordance with the certificate of grant. The (in)action by the Administrators is detrimental to the interests of the Applicants herein. Section 47 of the *Law of Succession Act* and Rule 73 of the *Probate and Administration rules* provide that Court has 'inherent power...to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court'. Accordingly, I will therefore allow the Application dated 8th April 2024 and make the following orders-

1. The Administrators will finalise transmission of the Estate to the identified beneficiaries within 90 days from the date hereof.
2. The matter will be mentioned on 18th June 2025 to confirm compliance.
3. Each party will bear their own costs.

DATED, SIGNED AND DELIVERED ON THE VIRTUAL PLATFORM, AT NAIROBI THIS 20TH DAY OF FEBRUARY, 2025.

PATRICIA NYAUNDI

JUDGE

In the presence of;

Fardosa Court Assistant

