



REPUBLIC OF KENYA



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**In re Estate of Rahab Wanjiru Evans (Deceased) (Succession Cause
96 of 2000) [2025] KEHC 2573 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2573 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 96 OF 2000
SM MOHOCHI, J
FEBRUARY 20, 2025**

IN THE MATTER OF THE ESTATE OF RAHAB WANJIRU EVANS (DECEASED)

RULING

1. These Succession proceedings are inquisitorial and not adversarial and this court detests weaponization of litigation or family members litigating for Wins that further drives a wedge within the family.
2. As earlier Noted the deceased in her wisdom expressed her last wishes in the will subject to the current execution of judgment.
3. As a Succession Court, the court is reluctant to wade into micro-management of estates of deceased persons and the court would only intervene where there is demonstrable gross abuse, criminal conduct and or any other actions that are contrary to the law.
4. Before me are Applications dated 21st April, 2021 seeking to suspend the appointment of Elizabeth Wanjira Evans as an Administratrix of the Estate of Rahab Wanjiru Evans (Deceased) pending the hearing and determination of this Application, and the removal of Elizabeth Wanjira Evans and Peter Gachege Njogu (Deceased) from the office of the Administratrix and Administrator respectively of the Estate of Rahab Wanjiru Evans (Deceased)
5. The 2nd Application dated 28th September, 2022 seeks the rendering the accounts by the Administrators on the dealings/distribution of the estate of the deceased and a mandatory order compelling the Administrators/Respondents to transfer, transmit and or convey the Applicant properties bequeathed to her vide Court of Appeal judgement in CA No 221 of 2007 and specifically as follows; -
 - a. 1/11 of the proceeds of sale realized from the sale of properties known as LR 209/11540-Nairobi and LR 337/1004 Mavoko Municipality upon deducting all the deceased estate liabilities; the 1/11 of the proceeds to be shared equally (per stirpes) among all the dependants of the late John Mburu Gachigi.
 - b. 1/11 of the proceeds of sale realized from the sale of movable properties described under Order No. C of the Court of Appeal judgement aforesated upon deducting all the deceased estate



- liabilities; 1/11 of the proceeds to be shared equally (per stirpes) among all the dependants of the late John Mburu Gachigi.
- c. 1/11 of the proceeds of sale realized from the sale of properties known as Nakuru Municipality Block 4/259 and Nakuru Municipality Block 4/258 the 1/11 of the proceeds to be shared equally (per stirpes) among all the dependants of the late John Mburu Gachigi
 - d. 1/11 of the proceeds of sale realized from the sale of properties known as Nakuru Municipality Block 7/491 which portion should be shared equally (per stirpes) among all the dependants of the late John Mburu Gachigi
 - e. 1/11 of the proceeds of sale realized from the sale of properties held in GEMA and Nyakinyua Cooperatives at Gilgil; the 1/11 of the proceeds to be shared equally (per stirpes) among all the dependants of the late John Mburu Gachigi
 - f. 1/11 of the proceed of Bank accounts held by the deceased in KCB Nakuru, National Bank, Grindlays Bank or any other identifiable financial institution; the 1/11 of the proceeds to be shared equally (per stirpes) among all the dependants of the late John Mburu Gachigi
 - g. Properties known as Nakuru Municipality Block 7/542, 545,546, 548 and 549 which properties ought to be shared equally among all the dependants of the late John Mburu Gachigi
 - h. The Administrators/Respondents be equally compelled to cater for all the legal fees and property rates payable and due against any property bequeathed to the Applicant.
6. The Application equally seeks a declaration that shares attributed to the late John Mburu Gachigi dependants be shared equally between Salome Njoki Mburu, Mary Nyambura Mburu, Elizabeth Wambui Mburu, Margaret Wanjiru Mburu and Mercy Wanjiru Mburu; and
 7. The 3rd Application is dated 16th August 2024 by seeking an Order directing the three Administrators to render updated accounts within a period to be determined that, the court be pleased to call for full information from Mary Wanjiru Gachigi on whether she can proceed with administratorship of the estate in view of the Orders granted by Hon. Justice H.M. Nyagah on 8th February, 2024.
 8. That court be pleased to find that the Administrators, Christine Wangari Gachigi, Elizabeth Wanjira Evans and Mary Wanjiru Gachigi, have failed in their mandate and the same be removed/retired from the Administration of the Estate,
 9. That the court be pleased to appoint new administrators to complete the winding up of the Estate and the Names be picked from the Names given at paragraph 8 of the joint supporting Affidavit.
 10. The 4th Application dated 17th September 2024 seeks a stay of directions issued 19th August 2024 as well as oppose the Application dated 16th August 2024.
 - I. The Application seeks for the summoning of Joseph Gachigi Zambetaki, Agnes Waitakwa and Lucy Muthoni to attend court in person to show cause why they should not be punished for contempt of court and perjury.
 - II. The Application further seeks Jason O. Maranga Advocate and commissioner for oaths be summoned to court to confirm whether Jane Nyambura appeared before him on 16th August 2024.



- III. That the court do find that Joseph Gachigi Zambetaki, Agnes Waitakwa And Lucy Muthoni are liable for a misdemeanor termed perjury under section 108 (1) (a) of the penal code cap 63 Laws of Kenya as well as contempt of court.
 - IV. The Applicant seeks an order the Director of public prosecutions to institute and undertake criminal aforementioned persons. proceedings against the
 - V. The Applicant seeks in the alternative that, Joseph Gachigi Zambetaki, Agnes Waitakwa and Lucy Muthoni be committed to civil jail for contempt of court for a period not exceeding six months.
 - VI. The court is thus invited to strike out from the court records the application dated 16th August 2024.
11. The Court had delivered an interim ruling and reserved its final orders (ruling) on the 5th November 2024 to allow All Administrators to each file a status account of the Administration of the estate they have (individually) undertaken since the Court of Appeal delivered its judgment.
 12. The reason of this stems from the manifest dysfunctionality in the administration of the estate on going and further to the fact that this is a post judgment ruling seeking to ensure execution of judgment.
 13. This court is alive to the fact that this is a probate of a written will that appointed the executors and the powers of an executor/executors are provided for in section 79 read together with section 80(1) of the Law of Succession Act which provide;
 79. The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.
 - 80(1). A grant of probate shall establish the will as from the date of death, and shall render valid all intermediate acts of the executor or executors to whom the grant is made consistent with his or their duties as such.
 14. In the case of In re Estate of Julius Mimano (Deceased) [2019] eKLR the court while dealing with the issue of powers of an executor stated as follows;

“According to section 79 of the Law of Succession Act, the estate of a dead person vests in the personal representatives. In this cause, the deceased died testate. He named executors in his will, who have obtained probate to the will. It is the said executors in whom the assets of the estate vested by virtue of section 79 of the act. By virtue of the said vesting the said personal representatives became entitled to exercise the powers that are set out in section 82 of the Law of Succession Act, which are akin to those of an owner of the property. They can sue or be sued over the property, they can sell or enter into contracts in respect to it, among others. The personal representatives have authority from the grant of representation they hold, whether it is one of probate or of letters of administration, to handle estate property.”

“section 83 of the act imposes duties on personal representatives to pay for the expense of the disposal of the remains of the deceased, to get in or gather or collect the assets of the estate, to pay for the expenses of the administration of the estate, to ascertain and pay out all debts and liabilities, and eventually to distribute the assets amongst the persons beneficially entitled.”



15. Removal of executors is not explicitly provided for in the law of succession, however such removal maybe on demonstration of gross misconduct, breach of trust and criminal actions adverse to the estate of the deceased.
16. Removal of executors appointed by the deceased in a will should be a rarity as the court is more concerned with the administration and execution as per the last wishes of the deceased.
17. In the case of *Vijay Morjaria vs Navinsingh Madhu Singh Darbar and another* (2000) eKLR the court of appeal held that;-

“fraud must be specifically pleaded and particulars thereof stated on the face of the pleadings”.
18. I am unpersuaded based on the pleadings filed, to find on a balance of probability that any gross misconduct, criminal activities have been committed by the executors to warrant their removal.
19. I however note that the 4th Executor, Mary Wanjiru Gachigi, is alleged to be suffering from a mental illness that disqualify her from continuing as an executor and the court notes that this issue remains undefended and that the 4th Executor elected to remain silent on this issue. This court thus has no hesitation to find that the 4th Executor is no longer able to exercise executorship and as such her continued executorship under the grant is on quick sand. This court shall issue summons for the personal appearance before court to show cause why she should continue as an executor in light of the orders subsisting in Nakuru Misc. App No E067 of 2023.
20. This courts orders or directions relating to her continued executorship shall be determined after her physical appearance.
21. In essence the grant issued to Peter Gachege Njogu (Deceased) has become inoperative by dint of death.
22. The demand for proceeds of sales by 3rd generation beneficiaries is pre-mature to the extent that the executors are at the tail end of administration expected to firstly settle any debts owed by the estate before sharing any moneys remaining amongst the beneficiaries.
23. With regards to the plea on payment of legal fees, land rent and rates by the estate upon specific bequest to specific beneficiaries, this court is of the view that those expenses are justifiable as expenses to the estate with no need for judicial pronouncement. I reiterate that a succession court should rarely wade into the realm of micromanaging probate estates, especially where it is a probate of a written will as in this instance.
24. The 2nd Application dated 28th September, 2022 is largely spent by virtue of the statements of account filed by the 1st and 2nd Administrators.
25. On the issue of failure of the executors to account for the estate, the 1st Administrator has explained in a massive filing of 1054 pages of her comprehensive statement of account running over a period of twenty-four (24) years on 5th December 2024, the while the 2nd Executor filed her nine (9) page statement of account dated 18th November 2024 and it is noteworthy that no party sought to rebut the filed statement of account nor file any rejoinder to the explanation in the reports filed. I will only assume parties lamenting of want of accounting are comfortable with the explanation so far. On a more positivistic approach, the fact that the 1st administrator has made filings becomes a good starting point on accountability and that beneficiaries may consider what the executor is saying.



26. Any orders sought that seek to vary the last wishes of the deceased would be untenable in this probate. The surviving executor(s) shall continue the Administration and execution of the probate strictly as per the will.
27. In this regards any share to a deceased beneficiary shall only be transmitted to the respective estate of such deceased beneficiary from whence a probate and administration may separately be undertaken. Provided where the deceased beneficiary pre-deceased the deceased then his/her share shall be transmitted to those succeeding the deceased beneficiary.
28. Taking into consideration the circumstances surrounding this case and the duration it has taken to conclude this mater, the fact that the probate is at the execution stage and in exercise of this court's discretion under section 47 of the *Law of Succession Act* and rule 73 of the *Probate and Administration Rules*, I am persuaded to decline to revoke the grant of probate of written and removal of Elizabeth Wanjira Evans a co-executor.
29. With Regards to the prayer of removal of Peter Gachege Njogu an executor who is deceased, the court recalls that Section 81 of the *Law of Succession Act*, provides in the event of the death of one or more of joint administrators, where there are several administrators, the surviving administrator or administrators would then have the mandate to continue with their duties to completion without the need to replace the deceased ones.

“Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executor or administrators shall become vested in the survivors or survivor of them...”
30. To that end, this court finds that, the grant issued herein to Peter Gachege Njogubecome useless and inoperative upon his demise. The Surviving Co-executors will conclude the administration and settlement of the estate.
31. The 4th Application dated 17th September 2024 is found to be of merit and the same is allowed only to the extent that the joint affidavit in support is a perfect candidate to strike-out by dint of the undated sworn affidavit by Jane Nyambura notarized by Mateo Brugnoli Notaio that denounces the joint Affidavit in support of the Application dated 16th August 2024.
32. This court takes a dim view of fraudulent filings by parties and their advocates and shall not hesitate to take firm sanctions against such conduct. In this instance the entire Application dated 16th August 2024 is hereby struck out.
33. The Applicants counsel to the Application dated 16th August 2024 is hereby reprimanded for filing a forged joint Affidavit and that this court shall not tolerate any such filings in the future.
34. This matter is at the execution stage and that save for the rectifications sought in review before the court of appeal all assets of the deceased shall strictly be distributed as per the confirmed grant and in line with the court of Appeal decision.
35. The properties currently subject to litigation remain unavailable for distribution until such cases are determined.
36. The proposed mode of distribution containing non-existing properties, shall be subject of review of judgment by the court of Appeal as alluded to by the 1st Administrator the Applicants are urged to actively participate in this process.



37. The 4th Executor, Mary Wanjiru Gachigi shall be expected to personally appear before court in the next scheduled mention date to show cause why she should continue as an executor in view of the aforesaid guardianship orders.
38. The Application dated 20th November 2024 was overtaken by events and became moot.
39. The direction by the court of Appeal for this court to supervise the execution of the judgment is an administrative task to be undertaken by the Deputy registrar and to this end I order that, this probate shall after the next scheduled mention date, be periodically mentioned before the deputy registrar to determine progress made.

It is so ordered.

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 20TH DAY OF FEBRUARY, 2025.

MOHOCHI S.M.

JUDGE

