



REPUBLIC OF KENYA



**In re Estate of Kimari Gitere (Deceased) (Succession Cause 777 of 1985)
[2025] KEHC 1579 (KLR) (Family) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1579 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 777 OF 1985
PM NYAUNDI, J
FEBRUARY 13, 2025
IN THE MATTER OF THE ESTATE OF KIMARI GITERE (DECEASED)**

BETWEEN

FLORENCE WANGUI KIMARI APPLICANT

AND

JEMIMAH JANE WACEKE KIMARI 1ST RESPONDENT

SHEM KIHORO KIMARI 2ND RESPONDENT

CHARITY WACEKE KIMARI 3RD RESPONDENT

RULING

1. By Summons dated 21st August 2023, presented under Section 66 (b), 71 (b) and 76 of the [Law of Succession Act](#) and Rule 73 of the Probate and Administration Rules, the Applicant seeks the following orders-
 - a. That the grant of letters of administration to 2nd and 3rd Respondents be revoked or annulled on the grounds that they are not diligent or ready to implement the Orders of this Honourable Court, including orders issued on 27th January 2012 (Justice Lenaola) and on 18th December 2015 (Justice Musyoka), rendering the grant to them useless and inoperative.
 - b. That the Court be pleased to issue the grant to the applicant.
 - c. That the grant be confirmed in terms of proposals set out in paragraph 8 of the affidavit of the applicant herein.
2. The Application is accompanied by the Supporting Affidavit of the Applicant sworn on the 21st August 2023.



3. The Applicant avers that pursuant to the orders of 27th January 2012 and 18th December 2015 she has now restored the titles into the name of the deceased and the estate should now be distributed to the rightful beneficiaries.
4. It is her submission that the administrators have been a hindrance to the finalisation of the administration of the estate. In making her proposal she submits that the gifts to the 2nd and 3rd respondents should be considered in the distribution.
5. Her proposal is the property be distributed as follows-



6. No.	Properties	1 st House	2 nd House
a)	LR.No. Githunguri/ Kiaria/273	10.87 acres	Robert Mwangi 1.087 acre Judy Nyawira 1.087 acre Florence Wangui Kimari 2.17 acres Charity Waceke Kimari 2.17 acres Winnie Wanjiru 2.17 acre Ruth Njeri Kimari 2.17 acres, to include the family house
b)	LR.No. Gatamaiyu/ Gachoiri/ 316	6.2 acres	Robert Mwangi 0.62 Acres Judy Nyawira 0.62 acres Florence Wangui Kimari 1.24 acres Shem Kihoro Kimari 1.24 acres Winnie Wanjiru 1.24 acres Ruth Njeri Kimari 1.24 acres
c)	Plot No. 28 Githunguri Market	½ share	Winnie Wanjiru Kimari ½ share
d)	Plot No. 2 Gathanji	½ share	Shem Kihoro Kimari ½ share
e)	Plot No. 76 Githunguri	½ share	Ruth Njeri Kimari ½ share
f)	LR.Githunguri/ Kiaria/ T.236	Nil	Florence Wangui Kimari ½ share Robert Mwangi ½ share Judy Nyawira
g)	LR.Githunguri/ Kiaria/ T.132	Nil	Winnie Wanjiru Kimari ½ share Olarity Waceke kimari ½ share



h)	LR.Githunguri/ Kiaria/T .3	Whole	Nil
i)	LR.Githunguri/ Kiaria/ T.133	Whole	Nil
j)	LR.Githunguri/ Githunguri/165	1 acre	Robert Mwangi ¼ acre Judy Nyawira ¼ acre Florence Wangui 0.5 acre
k)	LR. K. Githunguri/T.209	½ share	Ruth Njeri Kimari ½ share
l)	ICDC Shares	½ share	Shem Kihoro ½ share
M)	Rioki Estates	½ share	Charity Waceke ½ share
n)	Kiaria Co-operative shares	½ share	Shem Kihoro Kimari ½ share
o)	Ndumberi Co- operative shares	½ share	Shem Kihoro Kimari ½ share
P)	Breweries shares	½ share	Shem Kihoro Kimari ½

6. The Application is supported by Jemimah Jane Waceke Kimari a co administratrix vide her affidavit sworn on 22nd April 2024 and further affidavit sworn on 23rd May 2024. Her proposal on distribution of the estate is in consonance with that of Florence Wangui Kimari, save that she adds detail on how the estate is to be distributed amongst the family members of the 1st House.
7. The proposed distribution is as hereunder-



NO.	Properties	1 st House	2ndhouse
a)	LR.No. Githunguri/ Kiaria/273	Elizabeth Wacu Mwangi 2.174 acre	Robert Mwangi 1.087 acre Judy Nyawira 1.087 acre Florence Wangui Kimari 2.17 acres Charity Waceke Kimari 2.17 acres Winnie Wanjiru Kimari 2.17 acre Ruth Njeri Kimari 2.17 acres, to include the family house
		Dina Wambui Kamau 2.174 acre	
		Jemimah Waceke Kimari 2.174 acre	
		Edward Kimari Muturi 2.174 acre	
		Hellen Nyambura and Victor Mburu Kamau as trustees for them and 2 others 1.087 acre	
		Edith Wamaitha and Kenneth Kimari Kamau as trustees for them and 5 others 1.087 acre	
b)	LR.No.	Elizabeth Wacu	Robert Mwangi 0.62 Acres
	Gatamaiyu/ Gachoiri/	Mwangi 1.24 acre	Judy Nyawira 0.62 acres
	316	Dina Wambui	Florence Wangui Kimari 1.24
			acres
		Kamau 1.24 acre Jemimah Waceke Kimari 1.24 acre Edward Kimari Muturi 1.24 acre Hellen Nyambura and Victor Mburu Kamau as trustees for them and 2 others 0.62 acre	Shem Kihoro Kimari 1.24 acres Winnie Wanjiru Kimari 1.24 acres Ruth Njeri Kimari 1.24 acres



		Edith Wamaitha Kamau and Kenneth Kimari Kamau as trustees for them and 5 others 0.62 acre	
c)	Plot No. 28 Githunguri Market	Hellen Nyambura and Victor Mburu Kamau as trustees for them and 2 others ¼ share Edith Wamaitha Kamau and Kenneth Kimari Kamau as trustees for them and 5 others ¼ share	Winnie Wanjiru Kimari ½ share
d)	Plot No. 2 Gathanji	Edward Kimari Gitere ½ share	Shem Kihoro Kimari ½ share
e)	Plot No. 76 Githunguri	Jemimah Waceke Kimari ½ share	Ruth Njeri Kimari ½ share
f)	LR.Githunguri/ Kiairia/ T.236	Nil	Florence Wangui Kimari ½ share Robert Mwang 1½ share Judy Nyawira
g)	LR.Githunguri/ Kiairia/	Nil	Winnie Wanjiru Kimari ½
	T.132		share Charity Waceke kimari ½ share
h)	LR.Githunguri/ Kiairia/ T.3	Edward Kimari Gitere Whole	Nil
i)	LR.Githunguri/ Kiairia/	Hellen Nyambura	Nil
	T.133	and Victor Mburu	
		Kamau as trustee	
		for them and 2	
		others, Whole	



j)	LR.Githunguri/ Githung	Edward Kimari	Robert Mwangi ¼ acre Judy Nyawira ¼ acre Florence Wangui Kimari 0.5 acre
	uri/165	Gitere 1 acre	
		Elizabeth Wahu Mwangi 1h acre	
		Dina Wambui Kamau 1H Acre	
k)	LR. K. Githunguri/ T.209	J Jemimah Waceke Kimari ½ share	Ruth Njeri Kimari ½ share
l)	ICDC Shares	Edith Wamaitha ½ share	Shem Kihoro Kimari ½ share
m)	Rioki Estates	Edith Wamaitha ½ share	Charit Waceke Kimari ½ share
n)	Kiaria Co-operative shares	Edith Wamaitha ½ share	Shem Kihoro Kimari ½ share
o)	Ndumberi Co- operative shares	Edith Wamaitha ½ share	Shem Kihoro Kimari ½ share
p)	Breweries shares	Edith Wamaitha ½ share	Shem Kihoro Kimari ½



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		Edward Kimari Muturi 2.174 acre	
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b)	LR.No.	Elizabeth Wacu	Robert Mwangi 0.62 Acres
	Gatamaiyu/ Gachoiri/	Mwangi 1.24 acre	Judy Nyawira 0.62 acres
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		Edith Wamaitha Kamau and Kenneth Kimari Kamau as trustees for them and 5 others 0.62 acre	
c)	Plot No. 28 Githunguri Market	Hellen Nyambura and Victor Mburu Kamau as trustees for them and 2 others ¼ share Edith Wamaitha Kamau and Kenneth Kimari Kamau as trustees for them and 5 others ¼ share	Winnie Wanjiru Kimari ½ share
d)	Plot No. 2 Gathanji	Edward Kimari Gitere ½ share	Shem Kihoro Kimari ½ share
e)	Plot No. 76 Githunguri	Jemimah Waceke Kimari ½ share	Ruth Njeri Kimari ½ share
f)	LR.Githunguri/ Kiairia/ T.236	Nil	Florence Wangui Kimari ½ share Robert Mwang 1½ share Judy Nyawira
g)	LR.Githunguri/ Kiairia/	Nil	Winnie Wanjiru Kimari ½
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		Elizabeth Wahu Mwangi 1h acre	
		Dina Wambui Kamau 1H Acre	
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l)	ICDC Shares	Edith Wamaitha ½ share	Shem Kihoro Kimari ½ share
m)	Rioki Estates	Edith Wamaitha ½ share	Charit Waceke Kimari ½ share
n)	Kiaria Co-operative shares	Edith Wamaitha ½ share	Shem Kihoro Kimari ½ share
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		Jemimah Waceke Kimari 2.174 acre	
		Edward Kimari Muturi 2.174 acre	
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b)	LR.NO.	Elizabeth Wacu	Robert Mwangi 0.62 Acres
	Gatamaiyu/ Gachoiri/	Mwangi 1.24 acre	Judy Nyawira 0.62 acres
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		Edith Wamaitha Kamau and Kenneth Kimari Kamau as trustees for them and 5 others 0.62 acre	
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p)	Breweries shares	Edith Wamaitha ½ share	Shem Kihoro Kimari ½

8. The Application is opposed by Charity Waceke Kimari and Judith Nyawira Wanjohi who have sworn an affidavit of protest and replying affidavit respectively. Both assert that Githunguri / Githunguri/165 and Githunguri/ T.209 do not form part of the estate of the deceased and that therefore are not available for distribution. They further assert in the alternative that the mode of distribution should factor in gifts inter vivos by the deceased and the occupancy of the parcels of the land.
9. Judith Nyawira Wanjohi goes further to state that she and her brother Robert Mwangi only lay claim to the two assets and have no interest in the other assets of the estate of the deceased.
10. The Application was canvassed via written submissions. The Submissions of the Applicant are dated 6th August 2024 and reiterate the averments of the Applicants in her affidavits. It is her submission that her proposal is equitable and factors in both houses of the deceased and that the proposal of the 1st Respondent and Judith Nyawira Wanjohi is in contradiction of the orders issued on 27th January 2012 and 18th December 2015 by Justices Hon Lenaola (as he then was) and Hon. Musyoka J. respectively.
11. The Submissions of the Respondent are dated 1st October 2024 and the following issues framed for determination-
 - a. Whether the properties in dispute being land reference numbers Githunguri/ Githunguri/ 165 and Githunguri/ T.209 should be redistributed to other beneficiaries or should be distributed to Judith Nyawira and Robert Mwangi Wanjohi as the Children of Joyce Wacu Kimari and



- b. Whether the Grant of Administration to the 3rd Respondent should be revoked.
12. Neither of the parties cites any judicial precedent to support their respective positions.

Analysis and Determination

13. Having therefore considered the respective pleadings and submissions of the parties herein I discern the following to be the issues for determination
- a. Whether the grant issued to the 2nd and 3rd respondents should be revoked and a fresh grant to issue to the Applicant herein?
 - b. Whether the Court should confirm the grant and distribute the Estate in the manner proposed by the Applicant and the 1st Respondent
 - c. What are the consequential orders that should be made arising from the findings on (b) and (c) above.
 - d. Who should pay costs of this Application
14. On the 1st issue, whether or not the Court should revoke the grant issued to the 2nd and 3rd respondents? The grounds upon which a Court may revoke a grant are stipulated under Section 76 of the [Law of Succession Act](#), which provides;
76. Revocation or annulment of grant
- 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. Subsequent to the issuance of the Grant of Letters of Administration on 18th March 2015 on the motion of the Applicant and the 1st and 2nd Respondent herein dated 27th June 2012, The Court enumerated the assets of the deceased and directed that ‘the parties agree on a fresh mode of distribution taking into account any gifts by the deceased to any party and also taking into account the



present occupancy of any parcel of land by any beneficiary, if no agreement is reached within forty five (45) days, parties may file their affidavits on distribution and the Court may proceed to distribute the estate in accordance with Section 40 of the [law of succession Act](#).

16. It is the Applicant's submission that the 2nd and 3rd Administrators have neglected and or refused to administer the estate in accordance with the directions of the Court and have adopted a recalcitrant stance with regard to two assets namely; Githunguri/ Githunguri/ 165 and Githunguri/ T.209. It is their submission that the grant should be revoked pursuant to Section 76 (d) of the [Law of Succession Act](#).
17. Indeed, from the response of the 3rd Respondent, who is a co Administrator she is adamant that the 2 assets do not comprise the Estate of the deceased, this notwithstanding the orders of the Court issued on 18th December 2015 from which no appeal was filed. The said orders are therefore valid and enforceable.
18. In the case of Hadkinson -Vs- Hadkinson (1952) 2 ALL ER56 the court held as follows;

It was the plain and unqualified obligation of every person against or in respect of whom an order was made by a court of competent jurisdiction to obey it unless and until it was discharged and disobedience of such an order would as a general rule result in the person disobeying it being in contempt and punishable by committal or attachment and in an application to the court by him not being entertained until he had purged his contempt.
19. Further in the case of Republic v County Chief Officer, Finance & Economic Planning, Nairobi City County Ex Parte Stanley Muturi [2018] eKLR it was held as follows;

Court orders are not meant for cosmetic purposes. They are serious decisions that are meant to be and ought to be complied with strictly. As was held in [Teacher's Service Commission vs. Kenya National Union of Teachers & 2 Others Petition No. 23 of 2013](#):

The reason why courts will punish for contempt of court is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt of court proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed. A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.
20. It is disturbing that notwithstanding that no less than 3 Judges have pronounced themselves unequivocally on the assets that comprise the estate of the deceased, the 3rd Respondent has had the temerity to stand her ground, thus obstructing the finalisation of the administration of the estate. The Court cannot countenance this conduct and the 2nd and 3rd Respondent are cautioned that the Court takes a stern view of individuals who hold in contempt orders of the Court.
21. From the above it is evident that a basis has been laid for revocation of the Grant. The power to revoke or uphold a grant is a discretionary one. This principle was enunciated in the persuasive decision in Albert Imbuga Kisigwa vs Recho Kawai Kisigwa Succession Cause No. 158 of 2000 where Mwita J stated:-



Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.

22. The Applicant seeks that the grant issued to the 2nd and 3rd respondent be revoked and she be appointed administrator in their place. I observe that the Application by the Applicant is objected to by 3 beneficiaries, namely Winnie Kimari, Ruth Njeri Kimari and Judith Nyawira, all of whom are of the 2nd House alongside the Applicant. Her application therefore runs afoul of the mandatory requirement of rule 7(7) of the Probate and Administration Rules on the requirement of consent of persons having prior preference to a grant.
23. Accordingly, pursuant to Section 66 of the *Law of Succession Act* and on account of their conduct and statements, I will proceed to revoke the grant issued jointly the 1st, 2nd and 3rd Respondent and direct that a fresh grant issue to the 1st respondent, namely Jemimah Jane Waceke Kimari as the Sole administrator.
24. I make this order fully cognisant of the fact that the deceased was polygamous and that the ideal scenario is where each house is represented in the appointment of the administrator. This however has not worked for this estate as close to 20 years post the death of the deceased his estate is still pending final distribution. This is unacceptable. The provisions of Section 71, 82 and Sections 83 of the *Law of Succession Act* provide sufficient safeguards for the interests of the beneficiaries of the Estate.
25. On the 2nd issue, Whether the Court should confirm the grant and distribute the Estate in the manner proposed by the Applicant and the 1st Respondent?
26. The Application herein is presented by a beneficiary of the Estate, Section 71 of the Law of Succession provides as follows;

Confirmation of grants

- (1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.
- (2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may-
 - (a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or
 - (b) if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 inclusive, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be unadministered; or
 - (c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or
 - (d) postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:



Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares.

27. From the foregoing it is evident that an application under Section 71 of the Law of Succession Act can only be presented by an Administrator for the court to confirm the grant and pave the way for distribution of assets. The Applicant is not an administrator, for the aforesaid reasons, it is not possible at this instance to appoint her a co administrator.
28. Accordingly, the Summons dated 21st August 2023 partially succeeds on the following terms-
- a. For avoidance of doubt the assets of the estate of the deceased are as set out in the orders of the Court issued by Musyoka J on 18th December 2015
 - b. The Grant of letters of Administration issued to Jemimah Jane Waceke Kimari, Shem Kihoro Kimari and Charity Waceke Kimari is revoked
 - c. Fresh grant of letters of Administration Intestate will issue to Jemimah Jane Waceke Kimari.
 - d. The Administrator will now file summons for confirmation of grant with proposed mode of distribution of the estate of the deceased within 21 days from the date hereof. The proposed mode of distribution will as be directed by the Court on 18th December 2015 and consider any gifts by the deceased and present occupancy of any parcel of land by any beneficiary.
 - e. The summons filed under (d) above to be served upon all the beneficiaries.
 - f. Any beneficiary opposed to the proposed mode of distribution to file affidavit of protest within 21 days of service.
 - g. Mention on 14th May 2025 to confirm compliance and take further directions.

It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF FEBRUARY, 2025.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

.....Advocates for the Applicant

.Advocates for the Respondent

Fardosa Court Assistant

