



REPUBLIC OF KENYA



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**In re Estate of John Muraya Githinji (Deceased) (Succession Cause  
504 of 2011) [2025] KEHC 3351 (KLR) (19 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3351 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 504 OF 2011  
PN GICHOHI, J  
MARCH 19, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE JOHN MURAYA GITHINJI (DECEASED)**

**BETWEEN**

**BEATRICE NYAMURWA MURAYA ..... 1<sup>ST</sup> APPLICANT**

**JOEL GITHINJI MURAYA ..... 2<sup>ND</sup> APPLICANT**

**JAMES GITHINJI MURAYA ..... 3<sup>RD</sup> APPLICANT**

**AND**

**ESTHER WANGUI MURAYA ..... RESPONDENT**

**RULING**

1. The subject of this Ruling are two applications filed by the Objectors/Applicants. The First Application is a Chamber Summons dated 8/6/2023 brought pursuant to section 47 and 83 (f) & (g) of the Law of Succession, seeking Orders that:-
  1. Spent.
  2. The Administrator be summoned in Court to show cause why she has refused/neglected to have the Estate distributed to give effect to the Court judgment dated 20<sup>th</sup> November, 2022.
  3. The Court does order the Respondent to surrender all the title documents relating to all the properties of the deceased.
  4. An Order that the Administrator in conjunction with the beneficiaries do agree on surveyor to carry out the subdivision of the properties of the deceased.
  5. That costs of the application be provided for.



2. The grounds are on the face of the application and supported by the Affidavit sworn by Joel Githinji Muraya (2<sup>nd</sup> Objector/Applicant) on 8<sup>th</sup> June, 2023. He deposed that judgement was entered by this Court on 20<sup>th</sup> November, 2022, and pursuant to that judgement, the parties attempted to convene a meeting with the Administrator towards implementation of the said Judgement but has always been snubbed.
3. He states that the Administrator (Esther Wangui Muraya) has refused to cooperate with the other beneficiaries in the distribution of the Estate of the deceased. He explained that efforts to have a surveyor demarcate the properties were thwarted and she has also refused to produce title deeds of the subject properties to conclude succession.
4. Based on the foregoing, the Applicant urged this Court to summon the Administrator to show cause why she should not be removed as the Administrator of the Estate of the deceased. In addition, he seeks that that she be directed to produce all title documents of the Estate properties which are in her custody.
5. He argued that the Administrator's defiance is meant to ensure that only her family benefits from the properties of the Estate of the deceased to the exclusion of the other rightful beneficiaries.
6. In response to that application, the Respondent filed a Replying Affidavit sworn on 18<sup>th</sup> July, 2023 where she termed the application as mischievous, misconceived and without any basis.
7. She states that by a letter dated 10<sup>th</sup> March, 2023, the Objectors proposed a meeting on 17<sup>th</sup> March, 2023 but she was unwell and under medication on the said date. However, when this matter was mentioned before this Court on 21<sup>st</sup> June, 2023, she proposed for the meeting to be conducted on 7<sup>th</sup> July, 2023, which was held at Nuru Palace successfully.
8. She further stated that some of the properties herein do not have title deeds because they are yet to be processed. She explained that Muchorwe Plot 57 was sold by the deceased on 31<sup>st</sup> July, 1995 to Kinyukia self-help group but transfer had not been completed. That she owns Plot 2288 Kalenjin Enterprises, which property has never formed part of the Estate of the deceased.
9. She denied knowledge of any property known as Plot 1251 Tayari farm Molo and stated that Tayari farm plot measuring 50 by 150 feet is the same parcel as Mau Summit/Block 7/161(Tayari) and that Title to Nakuru Municipality Block 29/791(Rhonda) is in the custody of James Githinji Muraya, (the 3<sup>rd</sup> Objector herein).
10. From the foregoing, she stated that there is need for the beneficiaries to have a meeting and discuss how to administer the Estate of the deceased and distribute it per Judgement of 20<sup>th</sup> November, 2022.
11. In a rejoinder through a Further Affidavit sworn by James Githinji Muraya ( 3<sup>rd</sup> Objector) on 18<sup>th</sup> October, 2023, the Objector admitted that the beneficiaries met at Nuru Palace. He, however, stated that the meeting was not fruitful for they discovered that the Administrator had sold most of the deceased properties.
12. He stated that the properties listed in the Petition, the searches attached and the chiefs letter confirmed that the Estate properties are:-Molo LR. 533/290, Molo LR 7071.LR NO Tayari 332 (Currently Mau Summit Block 7/161-tayari).LR No. Tayari 333 which is currently Mau Summit Block 7/254(tayari).
13. It is his position that in addition to the above properties, some properties had been left out being; LR No. 10844(Molo), Molo LR 533/290 and Molo LR 7071.



14. He took issue with the Respondent's allegation that Plot 57 Muchorwe was sold by the deceased and stated that the Administrator listed the said property in the petition and thus the annexed sale agreement is a forgery.
15. He stated that Molo Mau Summit/ Block 7/1251(Tayari) exists and in fact was bequeath to Beatrice Nyamurwa Muraya but the Respondent has sold it. He reiterated the prayers sought in their Application and urged this Court to allow as prayed.
16. The second application is the Chamber Summons, dated 20<sup>th</sup> February 2024, also filed by the same Applicants and brought pursuant to Sections 45, 47, 83(e),94 and 95(1)(a) & (b) of the Law of Succession Act seeking Orders that:-
  1. Spent.
  2. Spent.
  3. The Administrator does render accounts and documents of all the assets of the deceased.
  4. In absence of (3) above, the Administrator be committed to Civil jail for contempt of Court.
  5. That costs of the Application be provided for.
17. The application is based on the grounds on the face of it and supported by the Affidavit sworn by Joel Githinji Muraya ( the 2<sup>nd</sup> Objector) on 20<sup>th</sup> January, 2024. He stated that in the meeting convened of 7<sup>th</sup> July, 2023, the Administrator refused and/ or failed to produce any of the title documents pertaining to the properties listed in the petition and which are to be distributed to the beneficiaries.
18. His position is that most of the assets of the deceased's Estate were sold by the Administrator in the pendency of these proceedings. He stated that Parcel Number Molo LR 7071, where the 3<sup>rd</sup> Objector lives with his family and one of the most prime properties of the Estate, has been subdivided and sold to 3<sup>rd</sup> parties, who have begun construction on the said property and further, the Administrator is solely enjoying rental proceeds from LR. 533 /290 (Paradise) which is a business premises.
19. On those grounds, the Applicant urged this Court to compel the Respondent to appear before Court and explain how she had dealt with the Estate of the deceased and further she be Ordered to render true and proper accounts of the Estate.
20. He argued that unless this Court intervenes, the Administrator will continue enjoying use of all the properties of the Estate to the exclusion of the other beneficiaries. He therefore contended that continued delay in the distribution of the Estate of the deceased is causing them untold suffering.
21. In response, the Respondent filed a Replying Affidavit sworn on 3<sup>rd</sup> June, 2024 . Terming the application mischievous, misconceived and without any legal basis, she stated that this Court had made a determination vide the Judgement of 20<sup>th</sup> November, 2022 as to which properties form the Estate of the deceased. She deponed that in that judgement, the Court established that Molo LR 7071 did not form part of the deceased Estate and therefore, the issue as to which properties belong to the deceased cannot be litigated upon in this application.
22. She maintained that she has not refused to produce documentation on the Estate properties adding that most of the ownership documents are in the hands of third parties who bought the said properties from the beneficiaries of the Estate of the deceased.



23. She expounded the above by stating that for example, the 3<sup>rd</sup> Objector sold Nakuru/Municipality Block 29/791 to John Wachira Chiri and handed over the original title to him while the 2<sup>nd</sup> Objector on the other hand , sold ½ an acre of Muchorwe Plot No. 91 to John Mwangi Kamau.
24. Further, she explained that most properties of the deceased do not have title deeds but she is following up the issuance of the same with the aid of the Court Order issued by this Court on 6<sup>th</sup> December, 2021 asking the Land registrar Nairobi to avail record of the contested parcels.

### **Determination**

25. This Court has considered the two applications, the respective Affidavits and the annexures. The applications are anchored on Section 45, 47, 83(e),(f) & (g), 94, and 95(1)(a) & (b) of the Law of Succession Act. For emphasis, these provisions are as reproduced as hereunder.
26. Section 45 of the Law of Succession Act prohibits against intermeddling with the property of a deceased person. Section 47 on the other hand, vests this Court with jurisdiction or powers to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.
27. Section 83(e)(f) &(g) of the Law of Succession Act, provides for duties of administrators as follows:-
  - “(e) within six months from the date of the grant, to produce to the Court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
  - (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
  - (g) 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 continuing trusts, and to produce to the court a full and accurate account of the completed administration.”
28. Section 94 of the Law of Succession Act provides that:- “a personal representative neglects to get in any asset forming part of the estate in respect of which re-presentation has been granted to him, or misapplies any such asset, or subjects it to loss or damage, he shall, whether or not also guilty of an offence on that account, be liable to make good any loss or damage so occasioned.”
29. Section 95(1)(a) &(b) states that;
  - “Any personal representative who, as regards the estate in respect of which representation has been granted to him-
    - a. wilfully or recklessly neglects to get in any asset forming part of the estate, misapplies any such asset, or subjects any such asset to loss or damage; or
    - b. wilfully fails to produce to the court any such inventory or account as is required by the provisions of paragraphs (e) and (g) of section 83; or
    - c. ....



d. ....

shall be guilty of an offence, and shall be liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.”

30. In the circumstances, the issues for determination in regard to the two applications are:-
1. Whether the Respondent should be compelled to render proper accounts of all the assets of the deceased.
  2. Whether the Respondent should be compelled to surrender title documents of the Estate properties.
  3. Whether the Respondent has refused to distribute the Estate of the deceased.
  4. Whether an order be issued to compel the Administrator and all the beneficiaries to agree on a surveyor to carry out subdivision of the Estate properties.
  5. Who should bear costs of these applications.
31. From the material availed by the parties herein, it is evident that the Administrator and some of the beneficiaries have already disposed of some of the properties of the Estate yet the Grant has not been confirmed. That amounts to intermeddling with the estate of the deceased which is an offence punishable by law. Indeed, Section 45 of the *Law of Succession Act* provides that:-
- (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
  - (2) Any person who contravenes the provisions of this section shall—
    - (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
    - (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration. [Emphasis added]
32. Upon Grant of Letters of Administration, the properties of the deceased are vested on the Administrator by virtue of section 79 of the *Law of Succession Act* and the powers set out in Section 82 that includes the power to sell estate property. That power is restricted with regard to immovable property, which can only be dealt with upon confirmation of Grant.
33. In the circumstances, all transactions purportedly carried out by any of the parties herein in regard to properties which form part of the Estate of the deceased herein are therefore illegal, null and void.
34. As highlighted above, Section 83(e) of the *Law of Succession Act* requires an Administrator to within six months from the date of the grant, produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.



35. Further, under Section 83 (g) an Administrator is obligated to complete the administration of the estate in respect of all matters within six months from the date of confirmation of the grant and to produce to the court a full and accurate account of the completed administration.
36. In this instant case, the Objectors/ Applicants' main argument is that the Administrator has failed to proceed diligently with the administration of the estate and that the Administrator has failed 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) (f) and (g) of Section 83 of the *Law of Succession Act*.
37. The role of the Administrator under the above cited provisions is well cut and is a statutory obligation. It cannot therefore be overemphasised that the duty to account for the assets, liabilities and dealings of any estate purely lies on the personal representatives. The Inventory under Section 83(e) is contemplated when an administrator has been granted Grant of Letter of Administration and before confirmation of the said Grant while production of Accounts under section 83 (g) is done after Confirmation of Grant and distribution of the Estate.
38. In this case, the Grant of Letters of Administration was issued to the Administrator/Respondent herein on 20<sup>th</sup> September, 2012 and consequently, Respondent was required within 6 months of obtaining the said Grant to render a full inventory of the Assets and liabilities of the deceased and a full and accurate account of all dealing therein. However, she has not made such an inventory and the objectors have not tendered any evidence to demonstrate that they requested for the said inventory. Nevertheless, obligation is on the Respondent to comply with Section 83 (e) of the *Act* but failed to do so.
39. This Court has powers on either its own motion or on the application of any interested party in the estate, to order an Administrator to produce a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.
40. The prayer for that Order was made based on allegation that the Administrator has sold most of the Estate properties but she denied. She argued that Muchorwi Plot No. 57 was sold by the deceased on 3<sup>rd</sup> July, 1995. Two other properties being Nakuru/Municipality Block 29/791 and Muchorwi Plot 91 were sold by the 3<sup>rd</sup> and 2<sup>nd</sup> Objectors respectively. She also stated that she does not know the status of Plot 1251 Tayari Molo.
41. Further, she stated that Plot 2288 Kalenjin Enterprise belongs to her and does not form part of the Estate of the deceased. While Mau Summit Block 7/161 (Tayari) is the same as Tayari farm Plot size 50 by 150 ft. In addition, she stated that Molo LR. 7071 does not form part of the Estate of the deceased as rightly established by this Court in the Judgement of 20<sup>th</sup> November, 2022.
42. A perusal of the Judgement by Rachel Ngetich J issued on 20<sup>th</sup> November, 2022 reveals that the Court identified the beneficiaries as 16 in number and these include the surviving spouses.
43. In regard to the mode of distribution of the deceased's property that remained undistributed by the deceased, the Court ordered that it should be shared amongst the 4 Houses including the surviving wife as an additional unit and that was in the ration of 10:2:2:2 with Esther Wangui Muraya, Cecilia Nyakio, Salome Wanjiru Muraya and Beatrice Wanjiru representing the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> House respectively.
44. The Court further directed the parties to take into consideration properties that were sold by the Administrator and listed the said properties as:-Plot No. 57 Muchorwe;Plot No. 90 & 91 Muchorwa;Tayari farm plot measuring 50 by 150 ft;Plot No. 2288 Kalenjin Enterprises-half acre;Plot 1251 Tayari Farm Molo.



45. In light of that decision, the argument by the Administrator that the properties forming part of the Estate of the deceased have been identified is not sound. In that Judgement, the Court did not identify properties forming part of the Estate of the deceased and therefore, the issue has not been resolved.
46. It is the identification of those properties by the parties herein that has caused the filling of the two applications herein, seeking for the administrator to render full inventory of the Assets and liabilities of the Estate herein in order to ascertain the net Estate for distribution.
47. In the circumstances herein, it is justified to compel the Administrator to produce a full Inventory of the Assets and Liabilities of the Estate herein, together with accurate account of her dealings with the estate.
48. As regards the prayer seeking the finding of this Court that the Administrator has refused to distribute the Estate and further, the prayer seeking for the parties to agree on a surveyor for the distribution of the Estate, it is clear that the said prayers are premature and unavailable as the Grant has not been confirmed.
49. The record herein reveals that the Administrator had filed an application dated 25<sup>th</sup> April, 2017 and another of 19<sup>th</sup> September, 2018, seeking confirmation of the Grant. These applications have not been prosecuted and therefore, the Estate cannot be distributed until the Summons for Confirmation of Grant is heard and the mode of distribution determined.
50. In conclusion and in the interest of justice, this Court makes the following Orders: -
1. Esther Wangui Muraya (the Administrator herein) shall within 30 days from the date hereof produce a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.
  2. Esther Wangui Muraya (the Administrator) be and is hereby ordered to apply for the Confirmation of Grant (30) after filling the Inventory as contemplated in Order 1 above.
  3. The Objectors are at liberty to file their mode of Distribution upon service of the Application for Confirmation of Grant contemplated in Order 2 above.
  4. The parties to move the Court upon compliance for further directions.
  5. This being a family matter, each party to bear its own costs.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 19<sup>TH</sup> DAY OF MARCH, 2025.**

**PATRICIA GICHOHI**

**JUDGE**

Nancy Njoroge for Objectors – Applicants

Ms. Joy Chesang for Mr. Njoroge for Administrator/Respondent

Ruto, Court Assistant

