



REPUBLIC OF KENYA



In re Estate of Peter Gathuita Ndirangu (Deceased) (Succession Cause 594 of 2009) [2025] KEHC 3639 (KLR) (Family) (17 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3639 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 594 OF 2009
PM NYAUNDI, J
MARCH 17, 2025
IN THE MATTER OF THE ESTATE OF PETER GATHUITA NDIRANGU(DECEASED)**

RULING

1. The Application for determination is dated 1st November 2023 and is presented by Eunice Njeri Gathuita, Philip Gichimu Ndirangu and Leah Wamuyu Mugetha in their capacity as Co-Administrators and they seek that
 - a. The Honourable court be pleased to issue an eviction orders (sic) against some of the relatives (grandchildren) of the deceased who have refused to move out of there to allow for renovation of the same.
 - b. The Honourable Court be pleased to remove one of the administrators Peter Ndichu Gathuita from being an administrator to enable the other three remaining administrators complete the administration of the estate.
2. The Application is supported by the joint affidavit of the Applicants sworn on even date.
3. The Application is opposed and the Respondent has sworn his affidavit in opposition dated 29th August 2024.
4. The grant herein was issued on 18th March 2011, subsequently confirmed on 19th March 2014 and rectified on 5th June 2023.
5. The Applicants contend that the grandchildren of the estate are intermeddling with the estate and the estate is at risk of being wasted. In particular it is alleged that the grandchildren are obstructing the repairs and renovations that the administrators wish to carry out on the property.
6. Further the administrators aver that the respondent is intermeddling with the estate by collecting rental income that he has failed to account for. He is also charged with failing to execute documents that allow for transmission of the estate in accordance with the certificate of confirmation.



7. Pursuant to the directions of the Court, the Applicant has filed submissions dated 8th October 2024. I have taken note of the submissions and the authorities cited.
8. The issues for determination are whether the Court should-
 - a. Order the eviction of the interested parties from LR No. 209/8363/5
 - b. Whether Peter Ndichu Gathuita should be removed as Co Administrator
 - c. Whether Peter Ndichu Gathuita should be compelled to account for rental income collected by him
9. At the outset I observe that the facts herein are a case study on the injustice occasioned when there is delay in finalising transmission of an estate. The Grant herein was issued on 18th March 2011 and confirmed on 19th March 2014. The failure to finalise distribution of the estate has resulted in beneficiaries adopting a free for all approach.
10. It is now well established that the role of the probate Court is limited to determining the net free assets of the deceased available for distribution, determining the beneficiaries of the estate and their respective shares, having made provision for liabilities if any. After that the Court is functus officio except for in the limited cases of revocation or rectification of grants, and other applications as provided for under the law.
11. Once a Court has issued the Certificate of Confirmation of Grant it should step back and allow the administrators to perform their duties and exercise their powers as provided for under Sections 82 and 83 of the *Law of Succession Act*.
12. The Applicants herein seek orders of eviction against the interested parties, it is my finding that this is beyond the mandate of the probate court, post confirmation of the grant. The Administrators are vested with powers to move the Court with the requisite jurisdiction to make the orders they seek. The issue at hand is no longer a determination of the estate of the deceased, his beneficiaries and the distribution of the estate. Accordingly, that limb of the application is dismissed.
13. The Applicants also seek the revocation of the grant in respect of their Co Administrator. Courts have repeatedly held that the Courts exercise of its power to revoke grants should be judicious and on solid grounds. This power should not be exercised whimsically or capriciously. Further that a Court must also take into account the interest of all the beneficiaries.
14. It is evident to me that the administration of the estate is being affected by the interpersonal relationship between the administrators. Unfortunately for them they are joined at the hip as they were appointed on the basis of representing the respective houses. I am not satisfied that sufficient basis has been laid for the Court to remove the Co Administrator. For instance, it has not been demonstrated to my satisfaction that there are documents he has failed or refused to execute.
15. On the 3rd issue if as alleged Peter Ndichu Gathuita is intermeddling by collecting rent as alleged, then the administrators do have the power to recover this as a debt before a Court of competent jurisdiction.
16. In the final analysis I will disallow the application, however in exercise of the powers vested in this court by virtue of Section 47 of the *Law of Succession Act* and Rule 73 of the *probate and administration rules* I will make the following orders to ensure that the transmission of the estate is finalised
 - a. The Administrators will finalise the transmission of the Estate in accordance with the Certificate of Confirmation of Grant as rectified on 5th June 2023 within 90 days.



- b. Where any administrator fails to execute documents to facilitate transmission delivered to him or her within 14 days of their delivery, the Deputy registrar shall execute the documents in their stead.
- c. The matter will be mentioned on 15th July 2025 to confirm compliance.
- d. This being a family matter there shall be no order as to costs.

DATED, SIGNED AND DELIVERED ON THE VIRTUAL PLATFORM, AT NAIROBI THIS 17th DAY OF MARCH, 2025.

PATRICIA NYAUNDI

JUDGE

In the presence of:

Kanja Court Assistant

Maina for Applicant

