



REPUBLIC OF KENYA



In re Estate of Samuel Wambugu Ngunyi (Deceased) (Succession Cause 2120 of 2005) [2025] KEHC 3610 (KLR) (Family) (17 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3610 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2120 OF 2005
PM NYAUNDI, J
MARCH 17, 2025**

BETWEEN

JACOB NGUNYI WAMBUGU 1ST APPLICANT

STEPHEN NJERU WAMBUGU 2ND APPLICANT

AND

ILEEN MAITHA WAMBUGU 1ST RESPONDENT

FAITH NJAMBI WAMBUGU 2ND RESPONDENT

RULING

1. This ruling relates to application by Counsel for the Applicants for Judgment on Admission pursuant to Order 13 Rule 2 of the *Civil Procedure Rules* and under Article 159 of *the constitution*.

Background

2. Samuel Wambugu Ngunyi died intestate on 13th March 2005. Ileen Wamaitha Wambugu and Faith Njambi Wambugu in their capacity as widow and daughter of the deceased petitioned for letters of administration of grant intestate. The grant was issued to them on 27th February 2006. The said grant was confirmed on 26th March 2007.
3. Jacob Ngunyi Wambugu and Stephen Njeru Wambugu (the Applicants) then filed summons for revocation of grant dated 6th July 2017 seeking the following orders;
 1. Spent.
 2. The grant of letters of administration to Ileen Maitha Wambugu and Faith Njambi Wambugu, the Respondents herein made on the 27th February 2006 and confirmed on the 26th day of



March 2007 in Nairobi High Court Succession Cause No, 2120 of 2005, be revoked by this Honourable Court.

3. Spent.
4. That an order do issue to the Respondents herein, their agents, servants, representatives and or proxies from interfering, trespassing, subdividing, selling, disposing, transmitting, interfering or dealing in any manner with the lands known as;
 - i. KJD/Kaputei - North (6069, 11930, 11551, 6060, 5944, 5945, 6051, 6031, 5946, 5972, 6014, 5996, 5991, 5992, 5942, 5993, 5948, 5950, 6039, 6007, 6068, 5989, 5988, 6054, 6056, 6063, 6064, 5952, 5961, 5963, 6055, 6070, 6061, 6066, 6067, 6062, 6033, 6071, 5976, 5995, 5965, 5994, 6044, 5958, 5959, 5964, 5968, 15290, 5839, 6050, 8905, 8906, 8907, 6069, 6058, 6049, 11914, 11917, 5825.
 - ii. Plot No. 388/Residential-Noonkopir Trading Centre.
 - iii. Plot No. 563/Residential- Noonkopir Trading Centre.
 - iv. L.R NO. 8907
 - v. L.R NO.8904
 - vi. L.R NO. 8901
 - vii. L.R NO. 5839
 - viii. PLOT NO. 118/119 Donholm Estate Phase 8.
5. That the court does invoke it's inherent power to remove the Respondents as administrators and replace them with the applicants herein and the other beneficiary Joy Muthoni Wambugu.
6. That costs of this application be borne by the Respondents.
4. The summons was fixed down for hearing. The 1st applicant and the 1st Respondent have testified. At the conclusion of the testimony of the 1st Respondent the Applicants applied for judgment on admission contending that during her testimony the 1st respondent conceded that she had excluded some assets of the deceased. It is submitted that she intentionally left out some properties of the deceased. He stated that this amounts to fraud. The Respondent's advocate opposed this application stating that Order 13 of the Civil Procedure Rules is not one of the orders that can be imported to proceedings under the *Law of Succession Act*. He argued that fraud is a serious allegation that needs to be proved and the particulars of the fraud need to be pleaded.

Analysis And Determination

5. The Applicants' advocate invoked Order 13 Rule 2 of the Civil Procedure Rules.
6. It is not in dispute that these are Succession proceedings which are governed by the *Law of Succession Act* and the Regulations made thereunder. Rule 63 of the Probate and Administration Rules provides as follows: -

Application of Civil Procedure Rules and High Court (Practice and Procedure) Rules

1. Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Order 5, rule 2 to 34 and Orders 11, 16, 19, 26, 40, 45 and 50



(Cap. 21 , Sub. Leg.), together with the High Court (Practice and Procedure) Rules (Cap. 8, Sub. Leg.), shall apply so far as relevant to proceedings under these Rules.

7. *In Re Estate of Ngarubia Kamau (Deceased)* [2021] eKLR, the Court pronounced as follows

Needless to say that, Parliament did not intend that proceedings under the *Law of Succession Act* be attended with undue regard for procedural technicalities, particularly the detailed procedural rules provided for in the *Civil Procedure Act* and the Rules thereunder. Hence, in *Josephine Wambui vs. Margaret Wanjiru Kamau & Another* [2013] eKLR the Court of Appeal held that:

We hasten to add that the *Law of Succession Act* is a self-sufficient Act of Parliament with its own substantive law and Rules of procedure. In the few instances where the need to supplement the same has been identified some specific rules have been directly imported to the Act through Rule 63(1).

Likewise, in *Josiah Mwangi Mutero & Another vs. Rachael Wagithi Mutero* [2016] eKLR, Hon. Mativo, J. had the following to say, which I entirely agree with:

On the issue whether Sections 1A, 1B of the *Civil Procedure Act* do apply in succession proceedings, guidance can be obtained in the book *Law of Succession* by W. M. Musyoka, where the author observes that "the *Law of Succession Act* inclusive of its support subsidiary legislation, is a comprehensive code of substantive and procedural law. Nyamu J in *Francis Kamau Mbugua & Another vs James Kinyanjui Mbugua* observed that the *Law of Succession Act* is a complete code except as regards third party rights or strangers, who should have recourse to provisions outside the Act. In succession causes, the probate court exercises its jurisdiction under the *Law of Succession Act* and its subsidiary legislation. The provisions of the *Civil Procedure Act* and the Civil Procedure Rules apply, and the probate court exercises jurisdiction under them, only to such extent as may be allowed by the *Law of Succession Act* and the Probate and Administration Rules.

Onyancha J was more explicit in *Shah vs Shah* [where he stated that where any proceedings are governed by special legislation, the provisions of the *Civil Procedure Act* and rules do not apply unless expressly provided by such special legislation, and the position remains the same even if the special legislation is silent about it and does not exclude the *Civil Procedure Act* and Rules.

Rule 63 (1) of the *Probate and Administration Rules* provides that:-

Save as in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Orders V, X, X1, XV, XV111, XXV, XL1V, and XL1X, together with the High Court (Practice and Procedure) Rules, shall apply so far as relevant to proceedings under these Rules.

From the above, it is clear that the only provisions of the Civil Procedure Rules imported to the *Law of Succession Act* are Orders dealing with service of summons, interrogatories, discoveries, inspection, consolidation of suits, summoning and attendance of witnesses, affidavits, review and computation of time.

The High Court has in numerous pronouncements severally stated that the other provisions of the *Civil Procedure Act* and Civil Procedure Rules, that is those not mentioned in rule 63 cited above are of no application at all in proceedings under the *Law of Succession Act*. For example, Khamoni J in the matter of the estate of Joseph Mwinga Mwangana-deceased



said in an application brought under Order XL1 Rule 4 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act, that the said provisions did not apply as probate proceedings are governed by their own rules of procedure and added that the Civil Procedure Act and Rules only apply where allowed by rule 63 of the Probate and Administration Rules... (emphasis added)

8. I concur with the reasoning of the Learned Judge and find that Order 13 rule 2 of the Civil Procedure Rules does not apply to probate proceedings.
9. The Applicant also invokes Article 159 (2) of the Constitution of Kenya which provides, In exercising judicial authority, the courts and tribunals shall be guided by the following principles—
 - a. justice shall be done to all, irrespective of status;
 - b. justice shall not be delayed;
 - c. alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);
 - d. justice shall be administered without undue regard to procedural technicalities; and
 - e. the purpose and principles of this Constitution shall be protected and promoted
10. It is the Applicant’s submission that justice should be administered without undue regard to procedural technicalities and that therefore the Court should grant the orders notwithstanding the provisions of rule 63 of the Probate and Administration rules.
11. In response to this suffice it to state that the same Article requires that justice be done to all, irrespective of status. What this guarantee to all, is that matters will be heard and determined on merit. The Supreme Court decision in Raila Odinga vs. the Independent Electoral and Boundaries Commission and 3 Others [2013] eKLR is instructive. The Court had this to say,

Our attention has repeatedly been drawn to the provisions of Article 159 (2) (d) of the Constitution which obliges a court of law to administer justice without undue regard to procedural technicalities. The Article simply means that a court of law should not pay undue attention to procedural requirements at the expense of substantive justice. It was never meant to oust the obligation of litigants to comply with procedural imperatives as they seek justice from courts of law.

We do not tire to remind litigants that mandatory rules of procedure, as is Order 53 Rule 1 of the Civil Procedure Rules, are not merely a cosmetic add-on to substantive law. They cannot be likened to a pack of cherries from which one’s choice to pick is as good as the choice not to. Indeed, the observance of such rules is mandatory, and for good reason.

12. Accordingly, I find that the exclusion of Order 13 rule 2 of the Civil Procedure Rules in probate proceedings is not a mere technicality and therefore will dismiss the application. The matter will proceed to hearing.

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
Mugambi for Administratrix
Vuchocho for Beneficiary – Joy Wambui Ngunyi
Ms. Wanjala holding brief for Mr. Kimeru for Applicants

