



In re Estate of Teresa Wanjiru Muigai (Deceased) (Succession Cause E461 of 2024) [2025] KEHC 3512 (KLR) (Family) (13 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3512 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E461 OF 2024
CJ KENDAGOR, J
MARCH 13, 2025
IN THE MATTER OF THE ESTATE OF TERESA WANJIRU MUIGAI (DECEASED)**

BETWEEN

JAMES THIONGO NJUGUNA PETITIONER

AND

MARIE MUIGAI WAMBUI 1ST RESPONDENT

SANDRA NJERI RWESE 2ND RESPONDENT

SUSAN WANGUI RWESE 3RD RESPONDENT

RULING

1. The Petitioner herein has moved this Court by way of a Petition for the Grant of Letters of Administration Ad Colligenda Bona, dated 22nd October, 2024, limited to the purposes of collecting, receiving, and preserving the estate, and undertaking any necessary acts until further representation is made.
2. The Petitioner is the surviving spouse of the deceased, who died on 21st April, 2024. In the affidavit in support of the petition, he listed himself, along with Marie Muigai Wambui, Sandra Njeri Rwese, and Susan Wangui Rwese, as the deceased's beneficiaries. The latter three are the deceased's daughters and Respondents in this Petition.
3. The Petitioner listed a motor vehicle registration number UNEP 405 K as the sole asset belonging to the deceased. He asserted that the vehicle was deteriorating at Gigiri Police Station following its impoundment. He stated that it is in the interest of justice for it to be collected and preserved to ensure it remains in working condition.



4. The Petitioner also stated that there is a safe deposit box No. 11/2009 at KCB Bank, United Nations Gigiri Complex Branch, to which the account numbers were referenced. The Petitioner stated that the contents of the safe deposit box were disclosed pursuant to a Court order dated 31st July, 2024, issued by Hon. Justice P. Mulwa in HCC COM. MISC. NO. E523 of 2024. He stated that he has a 100% legal and/or beneficial interest in, as well as being the sole owner of, most of the contents in the safety deposit box, and that it is just and fair for him to have custody of the same.
5. The order was annexed, and the extract, as submitted by the Petitioner regarding the contents of the box, is as follows:
 - I. General power of attorney dated 8th February, 2008 (by Penina Njeri Muigai to Teresa Wanjiru Muigai (deceased) as the donee);
 - II. Original and a copy of the Marriage Certificate between the Petitioner and the deceased;
 - III. Certificate of Title for the Matrimonial Property LR 7785/1099 IR 85306(Entry made on 11/03/2004 shows a transfer to Petitioner of ½ undivided share of the property as a gift);
 - IV. The Petitioner’s Will;
 - V. Affidavits of Marriage sworn by deceased on 10/06/1989 and 15/12/2003;
 - VI. Certificate of Title for L.R 22718/2 IR 74969, Kiambu (Entry made on 16th December, 1987 shows a transfer of the property to Petitioner and the deceased as joint owners)
6. Marie Muigai Wambui opposed the petition vide a Replying Affidavit sworn on 12th February, 2025. She averred that the court granted her and Sandra Njeri Rwese a limited grant of letters of administration for the purpose of filing a suit in Nairobi High Court Succession No. E408 of 2024. She asserted that they are in the process of identifying all the deceased’s properties. Further, that efforts to agree with the Petitioner regarding the deceased’s estate have been unsuccessful, as he refuses to cooperate with them.
7. According to the 1st Respondent, the motor vehicle was impounded at the police station to prevent illegal and unlawful sale, transfer, or interference by individuals and shylocks claiming entitlement to it.
8. She provided a detailed account of how the vehicle ended up at the station after being in the custody of the deceased’s driver who had refused to surrender the same. She stated that the driver disclosed the deceased had given her logbook as collateral to a shylock. According to her, the loan document presented by Kenneth, the shylock, bore a forged signature that did not belong to the deceased, and there is an ongoing investigation into the alleged loan supposedly secured using the motor vehicle’s logbook.
9. Parties highlighted their submissions. The Petitioner’s advocate stated that the motor vehicle is deteriorating at the Police Station and that the Petitioner seeks only to preserve the vehicle. They proposed that the vehicle can be placed at the Runda home, where none of the parties have access. Counsel submitted that the Petitioner does not intend to mismanage the estate, and the allegation of sale is unfounded. They maintained that there is no connection between the petitioner and the loan. Lastly, that most of the documents in the safe box belong to Petitioner, and he wishes to access them and preserve the contents in the safe box.
10. Counsel for the 1st Respondents submitted that the Petitioner did not tell the Court the circumstances under which the vehicle was impounded at the police station. They submitted that with the ongoing investigation into how a loan was acquired and the vehicle used as collateral by somebody other than



the deceased, the vehicle should be retained pending the conclusion of the investigations. Further, the documents in the safe box are safe at the bank.

11. 12. Counsel for the 1st Respondent further submitted that the deceased had adult children who should be involved in this process and that the Petitioner has refused to cooperate with the Respondents regarding the administration of the deceased's estate. She urged the court to dismiss the Petition and, as an alternative, requested that the deceased's vehicle be kept in Ngong pending the conclusion of the investigations concerning the loan. They maintained that the respondents are in the process of identifying the deceased's properties so they can petition for letters of administration.

Analysis and Determination

12. After carefully reviewing all the affidavits submitted by the parties involved and considering the submissions presented by counsel in this matter, the question for determination is whether the Petitioners' application for the grant of letters of administration ad colligenda bona is justified under the circumstances.
13. Section 67 of the *Law of Succession Act* CAP 160, Laws of Kenya provides for the administration of the estate limited for purposes only of collecting and preserving the assets. Under Rule 36 (1) of the Probate and Administration Rules such letters can only issue "where, owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of the representation to the person who by law be entitled thereto in sufficient time to meet the necessities of the case ..."
14. A grant ad colligenda bona is meant to preserve a deceased's estate and may be granted before a full grant is made. See *Morjaria v Abdalla* (1984) KLR 490.
15. It is not disputed that the Parties herein are beneficiaries to the deceased's estate. They do not have a consensus on the administration of the estate, and they have all approached the court for different grants regarding the estate.
16. Prior to the current consideration, the Court had struck out a previous Petition by the Petitioner where he sought 'access to estate monies in Bank Accounts for use in daily sustenance and such acts as may be necessary for the preservation of the estate...'. On the other hand, as acknowledged by the 1st Respondent, there exists a Grant ad litem issued to the Respondents in the High Court at Nairobi Succession Cause No. E408 of 2024, which was utilised in filing the Commercial Suit that disclosed the contents of the safe deposit.
17. The information provided indicates that the police are conducting ongoing investigations concerning the vehicle. Although the parties may have differing accounts of events, they appear to be cognisant of the investigations and issues. I shall refrain from commenting on any merits or otherwise, as the Police carry out their mandate independently. The parties suggested various locations that are not specified as part of the estate in their pleadings. The status of the police investigations was also not disclosed. The Police Station remains a neutral location at this stage. Upon the conclusion of the investigations and progress on any recommended actions, this motor vehicle issue may be presented to the Court for consideration in the current file.
18. The contents of the safety deposit box are well known. Given the acrimony surrounding this matter, they shall remain in the bank's custody, with any incidental costs to be taken from the deceased's estate.
19. None of the other properties listed in the safety deposit box's contents have been shown to be at risk of being wasted or invaded.



- 20. The Parties, being aware of the matters concerning the depreciation of the motor vehicle and the general interest in processing and concluding estate administration, should pursue an expedited, logical conclusion to the estate’s administration.
- 21. Taking into account the observations and issues raised by in the Affidavits, I find profound and weighty issues that can only be adequately canvassed, not in an application for a limited grant, but in an application for a full grant where the beneficiaries or the persons entitled to a grant as provided for in the Law of Succession Act may be at liberty to raise their concerns and objections, if any.
- 22. The conclusion drawn from the above observations and considerations is that the Petition is unmerited; I find that the Petitioner has not persuaded the Court regarding the special circumstances that justify the Court issuing a special grant ad colligenda bona.
- 23. The Petition dated 22nd October, 2024 is hereby dismissed. Any party entitled to apply for the grant of letters of administration for the deceased’s estate may promptly move the Court in that regard. Any subsequent pleadings shall be submitted in the current file to avoid instances where several files regarding the same deceased are opened.
- 24. Each party is to bear its own costs for the Petition herein.
- 25. It is so ordered.

DATED, DELLIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 13TH DAY OF MARCH 2025.

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C. KENDAGOR
JUDGE

In the presence of:

Court Assistant: Beryl

Ms. Njeri Kariuki, Advocate holding brief for Advocate Kaifa for the Petitioner

Mr. Mbugua, Advocate holding brief for Ms. Gitonga Advocate for 1st Respondent

