



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Stephen Gatheru Mwangi (Probate & Administration
809 of 2012) [2025] KEHC 4615 (KLR) (10 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4615 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
PROBATE & ADMINISTRATION 809 OF 2012**

MA ODERO, J

APRIL 10, 2025

IN THE MATTER OF THE ESTATE OF STEPHEN GATHERU MWANGI

BETWEEN

TABITHA WAMBUI NYAGUTHII APPLICANT

AND

CATHERINE WAMBUI NYAWIRA 1ST RESPONDENT

ROBERT KAMURU MUCHINA ALIAS ROBERT KAMURU

MWANGI 2ND RESPONDENT

RULING

1. Before this Court is the Summons General dated 28th July 2023 by which the Applicant Tabitha Wambui Nyaguthii seeks the following orders:-
 - “(a) That the Honourable Court be pleased to authorize its Deputy Registrar to sign all transmission documents, R.L 39 and 42, mutation forms, partition forms and any other documents necessary on behalf of Catherine Wambui Nyawira in order to give effect to the certificate of confirmation of grant issued herein.
 - (b) That the Commissioner of Lands Ardh House, be ordered to dispense with production of the original Certificate of Lease to land parcel L.R. 9456/8, copy of identity card, Pin Certificate and passport size photographs for Catherine Wambui Nyawira while registering the transmission forms R.L 39 and 42, mutation forms, partition forms and any other documents in respect of land parcel L.R. 9456/8 and in accordance with the certificate of confirmation of grant issued herein.



- (c) That the costs of this application be provided for.”
2. The application which was premised upon Rule 73 of the *Probate and Administrative Rules* was supported by the Affidavit of even date sworn by the Applicant.
 3. The Respondents/Administrators Catherine Wambui Nyawira and Robert Kamuru Muchina alias Robert Kamuru Mwangi opposed the application through the Replying Affidavit dated 14th November 2023 sworn by the 1st Respondent.
 4. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 3rd February 2025 whilst the Respondent relied upon the written submissions dated 10th February 2025.

Background

5. This succession cause relates to the estate of the late Stephen Gatheru Mwangi (hereinafter ‘the Deceased’) who died intestate on 24th February 2012. A copy of the death certificate Serial Number 109186 was filed in court on 3rd August 2012.
6. According to the chiefs letter dated 23rd July 2012 the Deceased was survived by one widow Catherine Wambui Nyawira and two children Paula Wanjugu Gatheru and Francis Mwangi Gatheru.
7. The estate of the Deceased comprised of the following Assets
 - (a) Nyeri/Block 4/139
 - (b) Nyeri/Block 4/140
 - (c) Nyeri/Block 4/141
 - (d) Nyeri/Block 4/143
 - (e) Nyeri/Block 4/133
 - (f) Nyeri/Block 4/142
 - (g) National Bank Account No. 012454326xxxxx
 - (h) Nyeri/Block 4/106
 - (i) Nyeri/Block 4 Plot No. 3
8. Following the demise of the Deceased the widow and one Robert Kamuru Muchina alias Robert Kamuru Mwangi were on 5th June 2014 appointed as joint administrators of the estate. The Grant was duly confirmed on 5th June 2014. The Amended Certificate of Confirmed Grant set out the mode of distribution of the estate.
9. The Applicant has now filed an application seeking orders to authorize the Hon. Deputy Registrar to execute the relevant document for transmission of the estate.

Analysis And Determination

10. I have perused the application before this court the reply filed thereto as well as the written submissions filed by both parties.



11. The Applicant claims that the 1st Administrator Catherine Wambui Nyawira has refused/declined to execute the documents necessary to facilitate the distribution of the estate. Hence this application to have the Hon. Deputy Registrar execute the same.
12. It is also alleged that the 1st Respondent has adamantly refused to avail the title document for the parcel of land known as LR 945618 to allow for the transmission of the said parcel of land. That the 1st Respondent has generally been unco-operative with respect to the distribution of the estate.
13. In opposing the application the 1st Respondent confirms that the Grant was confirmed in June 2014. The Respondent denies that she is frustrating the distribution of the estate and instead accuses her co-competitor of being unco-operative in finalising the distribution of the estate.
14. In a Further Affidavit dated 6th June 2023 sworn by the beneficiaries Paula Wanjugu Gatheru and Francis Mwangi Gatheru it is deponed that the consent which led to the confirmation of the Grant was not freely entered into. They submit that they were not consulted before the consent was reached and pray that the said consent be set aside. The beneficiaries further state that a paternity test is needed to determine if the Applicant is indeed a daughter to the Deceased.
15. At the outset I wish to note that these are the kind of applications which are totally unnecessary, take up precious judicial time and are motivated by meaningless squabbles and turf wars between beneficiaries.
16. It is common ground and the record clearly indicates that the Grant in this cause was confirmed by the court on 5th June 2014. It is also not in dispute that the confirmed grant sets out the mode of distribution of the estate. All that the parties are required to do is to comply with the mode of distribution as set out in the certificate of confirmed grant.
17. Therefore the issue now being raised by the beneficiaries challenging the consent which led to the confirmation of the grant is a step backwards. Grant was confirmed way back in June 2014. Why wait for over ten (10) years to complain about that confirmation. If the beneficiaries wish to impeach that consent then they ought to have filed a substantive application to set aside the consent or file a summons seeking to revoke the Grant. To date no application challenging the certificate or Confirmed Grant has been filed.
18. The two administrators of the estate must be reminded that they have certain legal obligations which are imposed upon them. Section 83(a) of the *Law of Succession Act* provides that Personal representatives have a duty to complete the administration of the estate within six (6) months of confirmation of the Grant.
19. In this case it is over ten (10) years since the Grant was confirmed and the estate is yet to be distributed. The parties are reminded that if the Administrators are unable and/or unwilling to carry out their statutory duties then the court may under Rule 73 of the *Probate and Administration Rules* remit the estate to the Public Trustee to finalize distribution. Indeed the Respondent did ask that the court appoint an independent person to distribute the estate.
20. *In re Estate of Zipporah Wairimu Hosea (Deceased)* [2022] eKLR where the court stated as follows:
 39. Under those circumstances it is fair and just for this court pursuant to the provisions of Rule 73 of the Probate and Administration Rules to ensure that the properties of the deceased are safeguarded for the benefit of all beneficiaries. Vesting the administration of the estate in the Public Trustee would not be prejudicial to parties and the estate of the deceased as the assets will not be wasted or intermeddled with and there will be no prejudice suffered by any of the parties. [Own emphasis]



21. The Respondent has submitted that she was not able to proceed with distribution of the estate as paternity results were being awaited.
22. Vide a letter dated 10th October 2023 the Kenya Medical Research Institute (KMERI) forwarded to this court the results of the paternity test which showed a 98.08% probability of siblingship between the Applicant and Paula Wanjugu (the Deceased's daughter)
23. Moreover the court record clearly indicates that the DNA report was received by the court on 25th April 2024 and that on 25th June 2024 all parties through their respective Advocates indicated their acceptance of those DNA results. Which results then is the Respondent still waiting for? This submission is a poor excuse and a red herring merely aimed at delaying the final distribution of the estate.
24. The parties accuse each other of withholding Title Documents relating to the properties left behind by Deceased. These are nothing but childish games not expected of mature adults. The required documents can be deposited with their respective advocates.
25. Finally I find no merit in this application. It amounts to an abuse of court process and clearly reveals nothing more than delaying tactics on the part of the widow and beneficiaries. This is a very old succession cause. The Deceased passed away way back in February 2012 – over thirteen (13) years ago.
26. Finally I disallow the application and make the following orders;-
 - (i) The administrators are directed to work together and with their Advocates to facilitate the speedy transmission of the estate in terms of the Amended Certificate of Confirmed Grant dated 5th June 2014.
 - (ii) In any event the distribution is to be completed within ninety (90) days.
 - (iii) Each party to meet their own costs.

DATED IN NYERI THIS 10TH DAY OF APRIL, 2025

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MAUREEN A. ODERO

JUDGE

