



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of James Njenga Muiruri (Deceased) (Succession Cause  
99 of 2017) [2025] KEHC 4605 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4605 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 99 OF 2017**

**HI ONG'UDI, J**

**APRIL 8, 2025**

**IN THE MATTER OF THE ESTATE OF JAMES NJENGA MUIRURI (DECEASED)**

**BETWEEN**

**VIRGINIA WAMBUI MURIITHI ..... 1<sup>ST</sup> APPLICANT**

**NAOMI WANJIKU NDUNGU ..... 2<sup>ND</sup> APPLICANT**

**SUING AS PERSONAL REPRESENTATIVES OF GRACE WANGARI NJENGA**

**AND**

**RACHAEL RUKENYA NJENGA ..... RESPONDENT**

**RULING**

1. In the amended Summons dated 11<sup>th</sup> October 2024 by the applicant prays for the following orders;
  - i. Spent
  - ii. The honourable Court be pleased to order and/ or direct the respondent herein, to execute and/ or sign all the relevant Transfer instruments, interalia the Mutation Forms respectively, together with such other applications for consent to facilitate the sub-division of LR No. Nakuru/Rare/Kiriri/1023 and thereafter transfer the resultant sub-divisions in favour of the designated beneficiaries.
  - iii. Consequent to prayer (2) hereof being granted, the honourable court be pleased to affix and/ or specify the timelines within which the respondent is to execute the Transfer and incidental instruments.
  - iv. In the alternative to prayers (2) and (3) hereof, the honourable court be pleased to mandate and/ or authorize the deputy Registrar of the honourable court to take over the mandate and/



or powers of the respondent and execute the Transfer and incidental instruments to facilitate the completion of Administration.

- v. This honourable court be pleased to order Kenya Commercial Bank (KCB) Njoro branch to release title deed LR No. Nakuru /Rare /Kiriri/1023 in joint account between the applicant and respondent to give effect of certificate of confirmation dated 29<sup>th</sup> July 2021.
  - vi. The honourable court be pleased to issue further and/ or other reliefs, as may be just and/ or expedient to facilitate compliance with the Certificate of confirmation of Grant issued on the 29<sup>th</sup> July 2021.
  - vii. Costs of the Application be borne in the course.
2. The application is premised on the grounds on its face as well as the affidavit sworn on even date by the applicants. They deponed that the respondent applied for and was subsequently issued with grant of letters of representation of the estate of the deceased on 26<sup>th</sup> June, 2017. The deceased died on 1<sup>st</sup> September 2004. The said grant was confirmed on 29<sup>th</sup> July 2021 and a certificate of confirmation of grant issued. Further, that the respondent was obliged to commence the process of distribution and/ or transfer of shares to the beneficiaries in the deceased's estate. She had however failed and/ or neglected to execute the statutory forms or instruments to facilitate the process of distribution.
  3. They further deponed that it was imperative that the respondent be compelled to undertake or execute her statutory mandate since the beneficiaries would not be able to appropriate, enjoy and/ or benefit from the estate of the deceased. They urged the court to grant the prayers sought in their application so as to have the deceased's estate distributed.
  4. In response the respondent filed a replying dated 30<sup>th</sup> November 2024. She averred that the applicants' application was bad in law, fatally defective, incompetent and unsustainable. That the applicants were not beneficiaries of the estate of the deceased and that Grace Wangari Njenga died before the estate was distributed and a title issued in her favour. Further, that she held a life interest over the estate of the deceased being the widow of the deceased and hence upon her demise, her share was redistributable within the estate. Furthermore, that all the properties of the estate had not changed hands and were still in the name of the deceased.
  5. She averred further that the applicants were eager to have the transfer instruments signed and yet the beneficiary of the said property is deceased. That this court's role was limited to the identification of the rightful beneficiaries of the estate and the distribution of the estate amongst such beneficiaries. She stated that as the administrator she was well aware of her duties and is willing to finalize the distribution of the estate as is required in law. She urged the court to dismiss the applicants' amended application dated 11<sup>th</sup> October, 2024 with costs.
  6. The applicants filed a supplementary affidavit dated 18<sup>th</sup> November 2024 in which they deponed that there were no concrete steps taken to subdivide Nakuru/Rare/Kiriri/1023 and thereafter transfer the property to the estate of Grace Wangari Njenga in line with the certificate of confirmation of grant issued on 29<sup>th</sup> July 2021. Further, that they did not dispute that the portion on which the deceased husband's remains were interred formed part of the respondent's share of the property. They added that no prejudice would be occasioned to the respondent since the property would be subdivided equally as per the certificate of confirmation of grant.
  7. The application was to be disposed of by way of written submissions. However, the respondent's counsel informed the court that they would not be filing any submissions so it is only the applicants who filed.



8. The applicant's submissions were filed by Armon Legacy Advocates and are dated 18<sup>th</sup> January 2024. Counsel gave a brief background of the application and identified three issues for determination
9. On the first issue on whether the administrator has duly performed her obligation, counsel submitted that the respondent who is also the administrator, had abdicated her duties by failing to subdivide and forthwith effect the transfer of a half share of Title No. Nakuru/Rare/Kiriri/1023 to the applicants. Further, that the grant was confirmed on 29<sup>th</sup> July 2021 and it outlined the mode of distribution of the estate of the deceased. The same had not been complied with, prompting the filing of the instant application.
10. He placed reliance on the decision *in re Estate of Daniel Khasievera Anusu (Deceased)* [2019] KEHC 352 (KLR), Justice J. Njagi opined as follows:

“I have considered the application and the grounds in opposition thereto. The Judgment of the court that ordered that the estate be shared equally between the beneficiaries was delivered on the 25<sup>th</sup> May, 2017. Among the duties of an administrator of an estate as set out in Rule 83 of the Probate and Administration Rules are to within six months from the date of confirmation of 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.

It is now 2 ½ years since when the court made its orders. The respondent as administrator of the estate has not done anything towards completion of the administration of the estate. It is clear that he has declined to comply with the court's orders made on 25<sup>th</sup> May 2017. It was not the duty of the applicant to forward documents to the respondent for execution. That was the duty of the administrator. Instead of comply in with the court orders the applicant is raising frivolous issues that have no connection with the application at hand. It is clear that the respondent has refused to execute the documents for ulterior motives which is in no doubt meant to punish the respondent due to their own personal differences. In the premises the respondent has failed in his duty as administrator of the estate of the deceased.”

11. Regarding the second issue on whether the applicants (Legal representatives of Grace Wangari Njenga) are entitled to her share from the estate of James Njenga, counsel submitted that vide the judgment delivered on 29<sup>th</sup> July 2021, Grace Wangari Njenga was entitled to half share from the estate of the deceased. However, the respondent delayed in effecting subdivision and transfer of the property to her which prompted her to file the instant application. Unfortunately, she passed away before prosecuting the same necessitating the administrators of her estate appointed by the grant of letters of administration ad litem granted by this court on 15<sup>th</sup> February 2023, to prosecute on behalf of her estate.
12. He further submitted that that upon Grace Njenga (wife to the deceased herein) being awarded half share of Nakuru/Rare/ Kiriri/1023 that property became her free property within the meaning of Section 3 of the *Law of succession Act* Cap 160. Therefore, her legal representatives being the applicants had a right to collect the free property of the deceased being half share of the Title No. Nakuru /Rare/ Kiriri/1023 as it forms part of the estate of Grace Njenga's estate.
13. Lastly, on who is entitled to costs, counsel submitted that costs follow the event and that they are awarded at the discretion of the court. Further, that costs are not awarded to punish the losing party but to compensate the successful party for their troubles in prosecuting or defending a case. He placed reliance on the decision in *Haraf Traders Limited v Narok County Government* [2022] eKLR with



authority cited in *Republic vs Rosemary Wairimu Munene Ex-Parte Plaintiff v Ibururu Dairy Farmers Co-operative Ltd* Judicial Review application no 6 of 2014 where it was held as follows: -

“The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event..... It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case.”

14. In conclusion, he urged the court to allow the applicants’ amended application and they be awarded costs.

### **Analysis and Determination**

15. I have considered the application, affidavits by the parties together with the submissions and authorities filed by the applicants. In my opinion the issue for determination is whether the application is merited.
16. Having carefully perused the court record, it is evident from the rectified certificate of confirmation of grant that the respondent was to hold in trust the title for Nakuru/Rare/Kiriri/1023. It is not in dispute that Grace Wangari Njenga (deceased) whom the applicants represent was the wife of the deceased. The grant was confirmed on 29<sup>th</sup> July 2021 and rectified on 16<sup>th</sup> March 2023. Section 83(g) of the [Law of Succession Act](#) mandates administrators of an estate to, within six months of confirmation of grant or longer period as the court may allow, complete the administration of the estate, and to produce to the court a full and accurate account of the completed administration. Clearly, in this matter the six (6) months have lapsed and there is no evidence of distribution of the deceased’s estate and no extension of the said period has been granted by this court to allow completion of administration of the estate. There is no doubt that the respondent has refused to sign the necessary documents to facilitate the distribution of the deceased estate to all the beneficiaries as per the confirmed grant. No evidence was adduced by the respondent to the contrary, nor any genuine reason given for the failure to act.
17. I take judicial notice of the fact that this is a 2017 matter and the respondent has admitted that no distribution has taken place despite the grant having been confirmed. Further, Justice Chemitei in his ruling dated 2<sup>nd</sup> November 2023 noted that the respondent who was the administrator of the estate had delayed in executing the grant so as to transmit to the beneficiaries their rightful shares. Section 47 of the [Law of Succession Act](#) and Rule 73 of the [Probate and Administration Rules](#) grants a succession court inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process.
18. Rule 73 of the [P&A](#) also provides as follows;

“Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice to prevent abuse of the process of the court.”
19. To prevent abuse of the court process and by the above provision, this court has inherent powers to prevent such abuse. I therefore find, and hold that the applicants’ amended summons dated 11<sup>th</sup> October 2024 is merited.
20. Accordingly, the respondent is hereby ordered to execute and/ or sign all the relevant transfer instruments to facilitate the sub-division of LR No. Nakuru/Rare/Kiriri/1023. This is to be done within twenty-one (21) days failure to which the deputy Registrar shall take over the mandate and/ or powers



of the respondent and execute the transfer and incidental instruments to facilitate the completion of administration.

21. Regarding prayer No. 5 in the application, this court has not been supplied with evidence justifying the issuance of the said order. The same is thus declined at the moment.
22. Being a family matter there shall be no order as to costs.
23. Orders accordingly

**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 8<sup>TH</sup> DAY OF APRIL, 2025 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**

**JUDGE**

