



REPUBLIC OF KENYA



Mwangi & 2 others v Ng'era & 3 others; Ng'era (Interested Party) (Succession Cause E014 of 2023) [2025] KEHC 5253 (KLR) (2 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5253 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE E014 OF 2023**

SM MOHOCHI, J

APRIL 2, 2025

IN THE MATTER OF THE ESTATE OF THE JOSEPH BORO NG'ERA (DECEASED)

BETWEEN

ESTHER GATHONI MWANGI 1ST PETITIONER

SAMMY NGUGI NG'ERA 2ND PETITIONER

ELIZABETH WANJIKU NG'ERA 3RD PETITIONER

AND

ELIZABETH WANJIKU NG'ERA 1ST OBJECTOR

MAUREEN BENIGNA WAITHER NG'ERA 2ND OBJECTOR

EMMANUEL KIMANI NG'ERA 3RD OBJECTOR

JUDY MARRIET NYAMBURA NG'ERA 4TH OBJECTOR

AND

GRACE WATHIMA NG'ERA INTERESTED PARTY

RULING

1. Before me are three (3) Applications: the 1st one dated the 19th day of April 2024, the 2nd Application dated 12th day of June 2024 and a Notice of Preliminary Objection dated the 18th day of June 2024.
2. With respect to the 1st Application dated 19th day of April 2024 the applicants are seeking the following orders: -
 - i. Orders to dismiss the summons for confirmation of grant dated the 4th day of April 2024 in its entirety for failure to involve the 1st and 2nd Applicants.



- ii. Orders to dismiss the summons for confirmation of grant dated the 4th day of April 2024 in its entirety for failure to give an actual, accurate and end to end address of the deceased's shares in Supa Duka Nakuru Limited.
 - iii. Orders to dismiss the Summons for Confirmation of Grant dated the 4th day of April 2024 for failure to capture the ascertained desires of the beneficiaries in its proposed mode of distribution of the deceased's assets.
 - iv. Orders to compels the Respondent to render a full account of the affairs of Supa Duka Limited to the extent of the deceased's shares.
 - v. Orders for a fresh Summons for confirmation of grant to be prepared with complete participation of the 1st and 2nd applicants herein.
 - vi. That costs of the application be provided for.
3. With respect to application dated the 12th day of June 2024 the applicant/interested party sought for the following orders: -
- i. An Order of Stay of proceedings pending the hearing and determination of the Matrimonial Cause High Court of Nakuru, Family Division, Cause Number HCFOS/E005 of 2024.
 - ii. An Order of the preservation of the estate of the deceased and assets pending the hearing and determination of the matrimonial cause High Court of Nakuru, Family Division Case number HCFOS/E005 OF 2024 filed by the interested party.
 - iii. That costs of this application be provided for.
4. With respect to the preliminary Objection dated 18th day of June 2024 the applicant thereof sought Summons for Confirmation of Grant dated the 4th day of April 2024 be stuck-out with costs on the basis that the said Summons for Confirmation of Grant was filed without consent of the remaining (2) two Administrators as required by the law amongst other grounds raised therein.

Analysis Determination and disposition

5. I have considered the extensive submissions by the parties, their respective sworn affidavits and list and bundles of authorities relied upon.
6. The following are the issues for determination before this Honourable Court: -
- a. Whether or not the Orders for dismissal of the Summons for Confirmation of grant dated the 4th day of April 2024 are merited herein.
 - b. Whether or not the applicant in application dated the 19th day of April 2024 is entitled to orders compelling the respondent to render a full account of affairs or Supa Duka Limited to the extent of deceased's share
 - c. Whether or not orders for fresh Summons for Confirmation of Grant be prepared afresh with complete participation of the 1st and 2nd plaintiff is merited.
 - d. Whether these proceedings should be stayed pending the hearing and determination of the Matrimonial Cause High Court of Nakuru, Family Division, Cause Number HCFOS/E005 of 2024.



7. It is noteworthy that the interested party is a former wife of the deceased divorced for desertion over thirty (30) years ago who has now initiated an originating summons against the personal representatives of the estate of the deceased seeking declarations that the entire estate of the deceased was held in trust for the interested party who solely acquired everything.
8. This Court had directed and provided timelines for filing of a summons for confirmation of grant with a rider that “any party disagreeing with the proposed modes of distribution shall file their respective affidavits of protest providing an alternative mode.
9. The application dated the 19th day of April 2024 is found without merit.
10. Sammy Ng’era and Elizabeth Wanjiku Ng’era shall file their respective affidavits of protest, providing their alternative modes for distribution within 60 days.
11. The summons for confirmation of grant shall be heard and disposed off by way of viva voce evidence.
12. The protestor’s case shall be prosecuted first followed by the Applicant’s case.
13. The application dated 12th June, 2024 is without merit and same is dismissed. The intended interested party lacks locus standi to participate in these proceedings.
14. With regards to Supa Duka Ltd this Court as a Succession Court shall concern itself on the shares of the deceased and their transmission and not the management. Matters relating to Companies Act should be dealt within the Companies Court.
15. The Notice of Preliminary Objection dated 18th June, 2024 is found not to be raising pure matters of law but rather factual issues that would draw the court in the establishment exercise. The same is hereby dismissed.
16. Any party aggrieved may move the Court of Appeal on an appeal, this leave of 45 days shall serve as stay period.
17. This Court shall thereafter not entertain an application for stay of proceedings.
18. I shall not award any costs and parties shall bear their own costs.

It is so ordered.

RULING READ, SIGNED AND DELIVERED AT NAKURU THIS 2ND DAY OF APRIL, 2025

MOHOCHI. S. M.

JUDGE

NB: The Stay Period shall run from the date the Ruling is collected owing to delay in publishing the same.

