



In re Estate of Christine Wangechi Gichigi (Deceased) (Succession Cause 2123 of 2007) [2025] KEHC 6433 (KLR) (Family) (23 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6433 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 2123 OF 2007

PM NYAUNDI, J

MAY 23, 2025

**IN THE MATTER OF THE ESTATE OF THE ESTATE
OF CHRISTINE WANGECHI GICHIGI (DECEASED)**

RULING

1. The Applicant, Martin Ndegwa Gichigi presents Notice of Motion under Sections 45 and 76 of the [Law Of Succession Act](#) and seeks that the respondent be found to be in contempt of the orders of the court issued on 29th July 2024 and that consequently she be sanctioned for the same and that she be compelled to cooperate with the administrator and specifically handover all the estate documents.
2. The Application is supported by the affidavit of the respondent sworn on 30th September 2024. The respondent opposes the application and has submitted affidavit sworn on 22nd November 2024. She avers that pursuant to the order of the Court she communicated the changed circumstances to the tenants in the rental units and has since terminated the service contracts she entered into. She avers that the documents sought are not with her but with firm of advocates that acts as trustees. There is nothing to prevent the applicant from dealing directly with the advocates.
3. The Application was canvassed via written submissions. The Applicants submissions are dated 13th January 2025. Those of the Respondent are dated 10th February 2025.
4. The applicant frames 2 issues for determination-
 - i. Whether the respondent has intermeddled with the estate property and is in contempt of court
 - ii. Whether the respondent is required to hand over all estate property to the Applicant.
5. On the first issue the applicant submits that actions by the respondent post 29th July 2024 amount to intermeddling of the estate. He cites that she received rental income in August 2024, leased out property and closed agreements without his participation and/ or involvement.



6. Reference is made to the decisions in *Veronica Njoki Wakagoto (Deceased)* [2013] eKLR; *Benson Mutuma Muriungi v C FO Kenya Police Sacco & Anor* [2016] eKLR; *Re Estate of M'Ngarithi M'Miriti* [2017] eKLR and *Estate of Geoffrey Mwangi Chege (Deceased)*[2017]eKLR.
7. The respondent identifies two issues for determination-
 - i. Whether the respondent is guilty of contempt for disobeying the orders issued on 29th July 2024 and in effect intermeddling
 - ii. Whether the respondent is required to hand over all estate documents to the applicant.
8. It is submitted that the application has not met the required threshold and reference made to the decision in *Mutitika v Babarine Farm Ltd* [1985] KLR 229. She submits that pursuant to order of 29th July 2024, she downed her tools. The actions alleged against her have not been proved to the required standard and reliance on the decision in re *Estate of Peter Kibicha Gathogo (Deceased)* [2023] KEHC 22782.
9. On the documents she asserts that the same are known to be with a firm of advocates who do not act on her instructions.
10. It is submitted that the applicant should meet the costs herein.

Analysis And Determination

11. On the basis of the pleadings filed herein, the rival submissions filed and the relevant law, I discern that the issues for determination are-
 - i. Whether the respondent is in contempt of the orders of 29th July 2024?
 - ii. Who should pay costs of this Application?
12. In the Court of Appeal decision in *Kenya National Union of Teachers & 2 others v Teachers Service Commission* [2018] KECA 214 (KLR), the Court laid out the tests to be applied by the Court in the determination of whether the threshold for citing an alleged contemnor for contempt of court has been satisfied.
 - i. The first test is the determination of the existence of the order(s) made by a court of competent jurisdiction and which was (were) allegedly transgressed.
 - ii. The Second test is the identification of the addressee(s) of the order allegedly transgressed
 - iii. The third test is the determination of whether the orders allegedly transgressed required the addressee (s) to do or refrain from doing something
 - iv. The fourth test deals with the determination of the address's knowledge of both the existence of the orders as well as the requirements in such orders as to what the address(s) should or should not do.
13. In order for the charge of contempt of Court to stand the actions complained of must result in the frustration of the orders of the Court and in particular be responsible for the aggrieved party not accessing the fruits of the judgment.
14. The order directed that grant issued to the respondent would be revoked, if the respondent failed to provide accounts. After the ruling the matter was mentioned several occasions and as the respondent failed to comply, the grant was revoked and a fresh grant issued with the applicant as sole administrator.



15. The order made no mention of handover of documents and other actions raised here by the applicant. It has not been established for instance that the respondent is the one who has the documents. Her actions that are said to be injurious to the estate are not demonstrated/ proved.
16. The applicant/ administrator has with the issuance of the grant in his favour, the tools with which to manage the estate. He is inviting the Court to walk beside him as he administers the estate, an invitation that must be declined. As has been stated on numerous occasions the mandate of the Court is limited. In In *re Estate of Alice Mumbua Mutua (Deceased)* [2017] KEHC8289 (KLR) the court expressed itself thus;

The *Law of Succession Act*, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.
17. Once the Court executes this mandate it is functus officio, save for the circumstances when the court is called upon to revoke, rectify or call for accounts. The Administrator ought to step out and perform the functions of their office. The Court is done here.
18. That being the case, the application of 30th September 2024 is dismissed in its entirety. The file is accordingly closed.
19. Each party will bear their own costs.

It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF MAY, 2025.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Mundia for the Applicant

Shikanda for Respondent

Fardosa Court Assistant

