



**In re Estate of Elijah Kimeia Wanguku (Deceased) (Succession Cause 866 of 2012) [2025] KEHC 6828 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6828 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 866 OF 2012**

**SM MOHOCHI, J**

**MAY 23, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE  
ELIJAH KIMEMIA WANGUKU (DECEASED)**

**BETWEEN**

- ESTHER WAITHIRA KIMEMIA ..... 1<sup>ST</sup> APPLICANT**
- BEATRICE MUTHONI KIMEMIA ..... 2<sup>ND</sup> APPLICANT**
- JOHN MWAURA KIMEMIA ..... 3<sup>RD</sup> APPLICANT**
- SAMUEL GITAU KIMEMIA ..... 4<sup>TH</sup> APPLICANT**
- SUSAN WAIRIMU KIMEMIA ..... 5<sup>TH</sup> APPLICANT**
- ANNE NYOKABI GACHARA ..... 6<sup>TH</sup> APPLICANT**
- MARY WANGUI WAWERU ..... 7<sup>TH</sup> APPLICANT**
- MONICA WAMBUI KIMEMIA ..... 8<sup>TH</sup> APPLICANT**
- DR. PETER MATU KIMEMIA ..... 9<sup>TH</sup> APPLICANT**

**AND**

- ROBERT MAINA KIMEMIA ..... 1<sup>ST</sup> RESPONDENT**
- SIMON NJUGUNA KIMEMIA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before are two Application, the 1<sup>st</sup> Application is a Chamber Summons Application Dated 19<sup>th</sup> February 2024 by Simon Kimemia a beneficiary filed under Section 47 of the *Law of Succession Act* seeking the following relief(s)



- i. Spent.
  - ii. That, the honorable Court be pleased to halt and/stop the sale of Nyahururu Municipality Block6/29.
  - iii. That, the honorable Court be pleased order that survey and subdivision of L.R No.6942/1 be undertaken by Afrigate Surveyors and/or County Surveyor. Nyandarua.
  - iv. That, the honorable Court be pleased to order that the County Valuer-Nyandarua to carry out a valuation on Nyahururu Municipality Block6/29 and prepare a report
  - v. That, there be no orders as to costs.
2. In supporting the Application depones that the Court ordered for a valuation on the property known as Nyahururu Municipality Block6/29 a valuation was conducted that suspiciously undervalued about Kshs. 5 Million, the said property was valued at approximately Kshs. 26 Million in 2015 and the consequent valuation was static at Kshs. 26 Million.
  3. It was his desire to seek another opinion from the county valuer on the current market value of the property before it is sold and that he had reservations on the proposed survey and subdivision of L.R NO. 6942/1 by one Joseph Nderitu, Surveyor of Gatome & Associates.
  4. That, a section of the beneficiaries have taken it upon themselves to impose on other beneficiaries purported family decisions that are proving very expensive to the estate. All concerns by dissenting opinions are brushed off in purported family meetings.
  5. That, the fees being charged by the said surveyor are exorbitantly high. There are cheaper alternatives but the said beneficiaries are hell bent on the exercise being conducted by the said surveyor. That the approximate costs for the same has been capped at Kshs 15,600,000/-.
  6. That, he has consulted a different surveyor, Stephen G. Kamau of Afrigate Surveyors who has given a relatively cheaper and affordable rate for the survey and subdivision.
  7. That, in the alternative, the County Surveyor-Nyandarua County can be ordered to conduct the survey and sub-divisions so that the estate is distributed in a transparent manner.
  8. The Application was opposed by John Mwaura Kimemia the 4<sup>th</sup> Respondent with the authority of 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> Respondents/Beneficiaries in his two-page incomplete, unsworn affidavit filed in Court on the 17<sup>th</sup> April 2024 that the Application is made in bad faith and it lacks merit, that the Court confirmed the grant of probate herein which provided for survey of L..R. 6942 /1 and the Court also directed that Nyahururu Municipality Block6/29 be sold and proceeds shared among the beneficiaries equally.
  9. That the 4<sup>th</sup> Respondent together with the 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> Respondents/Beneficiaries carried out a valuation for Nyahururu Municipality Block6/29 and a copy of the said valuation was provided to the Applicant.
  10. That the Applicant is free to carry out alternative valuation report for the said property but at his own costs as well as to introduce a Purchaser of the said property at a price that he believes to be fair to the estate.
  11. That, the decision to hire Joseph Nderitu, Surveyor of Gatome & Associates was arrived at on 8<sup>th</sup> July, 2023 in a meeting that was attended by the Applicant herein and that the decision was further revisited in subsequent meetings of the family.



12. That, the surveyor visited the property and prepared a draft report which was presented to the family on 8<sup>th</sup> July, 2023 in the presence of the Applicant and the executor.
13. That, the 4<sup>th</sup> Respondent together with the 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> Respondents/Beneficiaries paid Kshs. 350,000/- to the surveyor towards his professional work carried out prior to the meeting held on 8<sup>th</sup> July, 2023.
14. That, the family decisions were made in duly confirmed family meetings attended by beneficiaries who were free to make contribution before a decision is reached.
15. That, it is not true that the family does not take into account dissenting opinions but the majority decision should be allowed to carry the day.
16. That, the parcel of land involved in the survey work is big and is in excess of 1500 acres and it requires experienced surveyor and it cannot be cheap as the Applicant believes.
17. That, we are not aware of Stephen G. Kamau of Afrigate Surveyors and the Applicant has never presented the said surveyor to the other beneficiaries and we have heard about the said surveyor in these proceedings.
18. That, the Applicant intends to drag the family behind in the issue of survey which was discussed and agreed upon by all the beneficiaries.
19. That, the Applicant is the only beneficiary who disagrees with the appointment of Joseph Nderitu of Gatome & Associates.
20. That, the decision on survey cannot be revisited at this stage otherwise the process of survey will never be commenced as required.
21. That, it is clear from the documents exhibited by the Applicant that he is fully informed of all decisions that are reached by the family.
22. The 2<sup>nd</sup> Application is a chamber Summons Application dated 24<sup>th</sup> September 2024 filed pursuant Sections 47 and 76 of *Law of Succession Act* and Rule 73 of the Probate and Administration Rules and all enabling provisions of the law. The Applicant is the surviving widow of the deceased now almost 90 years old enjoined by 8 other beneficiaries approaching this Court for the following relief(s);
  - i. Spent
  - ii. That, the Court be pleased to revoke the appointment of the executor of the will as executor and in his place appoint Anne Nyokabi Gachara and Susan Wairimu Kimemia as the administrators of the estate of the late Elijah Kimemia with the will annexed thereto.
  - iii. That, the Court be pleased to appoint Gatome & Associates Licensed Land Surveyors to carry out surveyor work on L.R. 6942/1.
  - iv. That, in the alternative, in order to fast track, the administration of the estate, the Deputy Registrar of the High Court be directed to execute all the required documents to conclude the distribution of the estate to the beneficiaries.
  - v. That, the cost of this application be provided be in cause.
23. Esther Waithira Kimemia grounds her Summons on the basis that despite the grant of probate having been confirmed on 25<sup>th</sup> November, 2021 the executor has refused to proceed diligently with the



administration of the estate as required of the law, therefore necessary to revoke the appointment of the executor of the will to enable final distribution of the estate.

24. She further contends that, the proposed administrators are willing to take up the role of administrators and conclude the distribution of the estate the application should be allowed in the interest of justice.
25. She contended that she had in vain repeatedly asked her eldest son the executor to move with speed and have the distribution of the estate concluded which the executor had completely refused to show the was and his continued executorship has become untenable.

### **Executor's Case**

26. In his Sworn Affidavit dated 19<sup>th</sup> October 2024 Robert Kimemia maintains that the application is frivolous and an abuse of the Court process only meant to further delay the conclusion of the cause herein and also meant to benefit a section of the beneficiaries, who have selfish interests pertaining to two specific properties that are in contention in the cause herein.
27. That, there is more than meets the eye in the application filed by the applicants, expressing serious doubts and concerns as to the true 'applicants of the application dated 24<sup>th</sup> September, 2024
28. That, from the onset, he categorically states that the firm off M/s Waiganjo & Co. is not the family's legal firm and it only represents some of the beneficiaries in the estate.
29. That, his mother, Esther Maina kimemia is now 91 years and can hardly move, expressing serious doubts as to whether she executed the application and/or even knows that the present application has been filed on her behalf.
30. That, he has reason to believe that three of his siblings namely Mary Wangui Waweru, Monica Wambui and Dr. Peter Matu could not have been in Nakuru at the offices of M/s Waiganjo & Co. to append their signatures and/or thumb prints on the purported consent to oust him as the executor of the will of the estate the deceased.
31. That, he has performed his duties as the executor of the will of the late Elijah Kimemia to the best of his ability and as required by law.
32. That, there have been attempts to defraud the estate that he has resisted and believe has now necessitated for and motivated the filing of the present application in Court to remove him as the executor.
33. That, he has resisted attempts to dispose of Nyahururu Municipality Block6/29 in a clandestine manner.
34. That, he has never as the executor of the will herein appointed M/s Waiganjo & Co. or any other person or entity to act as an agent to advertise for sale, sell and for receive proceeds for the sale of the property known as Nyahururu Municipality Block6/29
35. That, whereas no official bid has been presented by any purchaser on the property, there have been suggestions by some of my siblings that the money and/or proceeds from the sale be deposited in an account in the name of Advocate Waiganjo, B.M Kimemia and J.W Kimemia.
36. That, the deliberate omission of my name from the signatories of the proposed account is quite telling and shows the malice and bad faith by some of the beneficiaries.
37. That, if and when the property is disposed of; and the mode of distribution is known, why can't every beneficiary get his/her share from the sale without the same passing through a third party.



38. That, it is unjustifiable that the fees owing to the firm of M/S WAIGANJO & CO. is passed on to the estate and not to the beneficiaries the law firm represents. If any legal fee is owing to the law firm it should be paid by the specific beneficiaries and/or clients represented by the firm
39. That, he has not received any official request to offer survey services on the subdivision of L.R No. 6942/1 by one Joseph Nderitu, Surveyor of Gatome & Gatome Associates.
40. That, at no time have he the executor ever instructed the said firm of surveyors to conduct any works on L.R No. 6942/1 and disown the so-called instructions.
41. That, some beneficiaries have taken it upon themselves to impose on other beneficiaries purported family decisions that are proving very expensive to the estate. The firm of Surveyors has categorically stated that the family must deposit at least half their professional fees for works to commence.
42. That, the said specific beneficiaries meet and come up decisions that are now being referenced to as family decisions.
43. That, the fees being charged by the said surveyor are exorbitantly high. That the approximate costs for the same has been capped at Kshs. 8,900,000/=.
44. That, there are cheaper alternatives but the said beneficiaries are hell bent on the exercise being conducted by the said surveyor.
45. That, a different surveyor, Stephen G. Kamau of Afrigate Surveyor has requested officially to offer his professional services on the survey and has given a relatively cheaper and affordable rate for the survey and subdivision.
46. That, not every member of the family has the financial muscle to raise the funds that were proposed by Gatome and Gatome Associates being Kshs. 1,2 Million per individual.
47. That, he cannot raise the monies as charged and thus it is will be unfair for him to be forced to go with that particular surveyor.
48. That, for instance, whereas Gatome & Gatome Associates has proposed a charge of Kshs. 350,000/= for Data Collection and Ground Reconnaissance, Afrigate charges Kshs.50, 000/ for the same work.
49. That, no authority was given to M/s Waiganjo & Co. to make any payment for the survey and subdivision to Gatome &Gatome Associates as evidence by the cheque of Kshs. 350,000/=.
50. That, the above is duplicated in various aspects off the whole process. In sum total Afrigate Surveyors will not charge more than Kshs. 3 Million.
51. That he had facilitated through meetings for the surveyor to meet and explain the process and attendant charges to the family members.
52. That, the surveyor has since done some reconnaissance on the ground and has produced an initial sketch on how they intend to do the work.
53. That, whereas Afrigate has itemized the works to be done and incidental costs attendant thereon as evidenced in their quotation above, Gatome & Gatome's fees keep fluctuating.
54. That, it does not make economic sense and/or value to go for the more expensive surveyor whereas there is an alternative, competent and relatively cheaper surveyor who has can accomplish the work.
55. That, the application herein is made in bad faith and/or the prayer to remove him as the executor and/or administrator of the estate is not made in good faith. It is meant to remove him so that the applicants



can irregularly benefit from the estate and therefore strongly opposes the application praying that the same is dismissed with costs.

56. None of the parties filed their written submissions despite repeated opportunities afforded.

### **Analysis and Determination**

57. As I have held in other matters a succession Court should never be drawn into the realm of micromanaging estates of deceased persons and that the personal representatives or executors such as in this instance should accordingly be supported to undertake their work as is provided for in the law.

58. The power to revoke or uphold a grant is a discretionary one and not an equitable remedy as submitted by the Applicants. This principle was enunciated in the persuasive decision in *Albert Imbuga Kisigwa v Recho Kawai Kisigwa Succession Cause No 158 of 2000* where Mwita J stated: -

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the Court to invoke section 76 and order to revoke or annul a grant. And when a Court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”

59. It is equally important to the parties to note that, Succession proceedings unlike ordinary civil proceedings are inquisitorial in nature and not adversarial and as such parties need to constantly recall this.

60. I unfortunately observe that this probate is confirmed and the only squabble’s ongoing relate to distribution of two remaining assets in the estate of the deceased. The only assets remaining and awaiting distribution is L.R.No. 6942/1, Approx. 1500 Acres, to be gifted to Esther Waithera Kimemia-300 acres and 1200 acres to all others beneficiaries in equal shares and Nyahururu Municipality Block6/29, To Be Sold and Proceeds Shared Among All Beneficiaries.

61. In the wisdom of the deceased he unilaterally appointed eldest son Robert Maina Kimemia and not his wife Esther Waithera Kimemia, we may never know this reason as of now the executor is the representative of the deceased and there appears efforts at imposing decisions upon the Executor such as who shall undertake work for pay, where monies are to be deposited and so forth.

62. This Court is of the view that the executor has full authority to make All decisions relating to the settlement of liabilities to the estate, hiring of experts and shall be the ultimate custodian of All proceeds of sale for distribution to the beneficiaries.

63. Revocation of grant of probate of a written will can only be upon the statutory parameters provided for under the *law of succession act* and where it is demonstrated that the executor has engaged himself in serious criminal conduct to the detriment of the estate.

64. Any family convenings may discuss and make proposals to the executor but they should respectfully await his final word. In this instance it is the decisions taken in disregard of the executor that gave rise to a delay which the creators now urge for the removal of executor as the basis. This is a self-created catch-22 scenario.

65. Any losses occasioned upon the Estate of the Deceased owing to negligence, fraud or theft on the part of the executor may be recoverable directly from the executor of the estate for breach of trust and criminal



conduct however such actions in tort cannot hold back distribution of the estate of the deceased and can be conducted after the distribution of the estate has occurred.

66. In view of the serious disagreements on the costs of survey and subdivision of L.R.No. 6942/1, and who should undertake the same this Court is of the view that the County Surveyor Nyandarua County undertakes the exercise within the next nine (9) months and that all requisite charges fees and outgoings for this exercise shall be drawn from the estate of the deceased.
67. In view of the serious disagreements on the market value of Nyahururu Municipality Block6/29 and who should undertake the valuation, this Court is of the view that the County Valuer Nyandarua County undertakes the exercise within the next nine (9) months and that all requisite charges fees and outgoings for this exercise shall be drawn from the estate of the deceased.
68. Owing from a foregoing I do find Merit in the 1<sup>st</sup> Application dated 19<sup>th</sup> February 2024 and finds no merit in the 2<sup>nd</sup> Application dated 24<sup>th</sup> September 2024 and accordingly dismiss the same with no orders as to costs.
69. However, the Court in the interests of expediting the conclusion of distribution of the remaining assets forming part of the estate of the deceased I hereby order that: -
  - i. An Order is hereby made Directing the County Surveyor Nyandarua County to forthwith undertake the survey and subdivision of L.R.No. 6942/1 and that The Executor shall pay the state the requisite fees and charges.
  - ii. An Order is hereby made Directing the County Valuer-Nyandarua to conduct a current market valuation on Nyahururu Municipality Block6/29 and that The Executor shall pay the state the requisite fees and charges.
  - iii. Any Advertisement for sale of Nyahururu Municipality Block6/29 shall be in the name of the Executor of the estate of the deceased.
  - iv. Robert Kimemia is hereby Ordered to receive opinions suggestions by Beneficiaries but to ultimately make all decisions relating to the distribution within the next six months from today
  - v. I shall not award any orders as to costs.

**SIGNED, DATED AND DELIVERED IN NAKURU ON THIS 23<sup>RD</sup> MAY 2025**

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**MOHOCHI S.M**

**JUDGE**

