



REPUBLIC OF KENYA



**In re Estate of Richard Churko Stephen alias Richard Churko Guyo (Deceased)
(Succession Cause 8 of 2018) [2025] KEHC 6284 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6284 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
SUCCESSION CAUSE 8 OF 2018**

**FR OLEL, J
MAY 15, 2025**

RULING

A. Introduction.

1. The application before this court for determination is the Summons for confirmation of grant dated 18th March 2024 seeking for orders that;
 - a. That the grant of letters of administration intestate made to GRACE WAMBUI NGUGI and FATUMA GALGALO JILO dated 21st February 2025, be confirmed and the estate be divided in terms of the annexed proposed mode of distribution.
 - b. That costs of this application be provided for.
2. The application is supported by the grounds made on the face of the said application and the supporting affidavit of GRACE WAMBUI NGUGI, who depones that the grant of letters of administration was issued on 21st February 2025 pursuant to this courts judgment dated 24th September 2025. She proposed that the said estate be divided equally between the two families of the deceased as there was no dispute as to who were beneficially entitled to share the same.
3. The respondent, opposed this Application through her replying affidavit dated 4th April 2025. She deponed that the deceased family had not consented to the proposed mode of distribution and therefore it was premature of the applicant to file for confirmation of grant. She further noted that while the judgment dated 24th September 2019, had ordered that a new grant be prepared under both their names, there was no court order revoking or amending the original grant issued on 18.09.2017 as provided for under section 76 of the [law of Succession Act](#), Cap 160 laws of Kenya. To that extent the new grant of letters of administration intestate was null and void.
4. The respondent further averred that she had filed an appeal, at the court of Appeal-Nyeri (COA Appeal Civil No 311 of 2019), against the judgment of this court dated 24th September 2019 and that directions as to hearing of that Appeal had been issued on 25.03.2025, with both parties being granted 30 days each to file their submissions. It was therefore prudent to have the appeal heard and determined



first, before the issue of confirmation of grant and/or distribution of the estate could be dealt with.

5. The respondent also posited that the assets of the estate were yet to be ascertained as there were suits filed (Marsabit ELC No 37 of 2015 and Marsabit ELC No 09 of 2020) pending at Marsabit Environment and land court challenging their title to Marsabit Plot 2X3, while the valuation carried out on Plot No 11XX6/1X4 within Marsabit town was wanting as the value stated did not capture the true value of the developments carried out thereon. Finally, it was also her contention that Marsabit Plot 40, was Ancestral land measuring about five (5) acres and it was wrong/uncultural for them to sell the same.
6. The respondent therefore urged this court to find that the application for confirmation of grant had been prematurely filed and further urged that proceeding in this matter be suspended awaiting the determination of the Appeal pending before the court of Appeal sitting in Nyeri as to who were the genuine beneficiaries to the estate.

B. Determination.

2. I have considered the Application, response filed and submissions filed by both parties and arrive at the following conclusion.
3. It is not disputed by the Applicant that an Appeal (Nyeri COA Case No 311 of 2019) was filed challenging this court's judgment dated 24th September 2019 and that direction's as to how the said Appeal is to be determined had been issued, to wit parties had been directed to file their written submission's in preparation for its determination.
4. The respondent has a universally guaranteed right to be heard which is right is sacred and is also protected under Article 50(2) of *the Constitution* of Kenya 2010. Under the obtaining circumstance, it would clearly be prejudicial to the respondent, if this court proceeds' to have the grant confirmed and/or have the estate distributed before the appeal is heard and determined.
5. Given the obtaining matrix, I do exercise my discretionary powers under Section 47 of the *law of Succession Act*, as read with Rule 73 of the probate and Succession Rules to order that there will be a temporary stay of proceedings in this matter for a period six months pending determination of Nyeri Court of Appeal, Civil Appeal No 311 of 2019, involving the parties herein.
6. It is so Ordered

READ, SIGNED, AND DELIVERED VIRTUALLY AT MARSABIT ON THIS 15TH DAY OF MAY,2025.

FRANCIS RAYOLA OLEL

JUDGE

