



REPUBLIC OF KENYA



In re Estate of Kaga Kimaru Gathua (Deceased) (Succession Cause 42 of 2015) [2025] KEHC 5729 (KLR) (9 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5729 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 42 OF 2015**

SM MOHOCHI, J

MAY 9, 2025

BETWEEN

FLORENCE NJOKI KAGA APPLICANT

AND

JOSHUA KARIUKI KAGA RESPONDENT

(IN THE MATTER OF THE ESTATE OF THE LATE KAGA KIMARU GATHUA (DECEASED))

RULING

1. The Applicant's the application dated 9th April 2025 seeks to set-aside the Court orders issued on 3rd April 2025 which orders allowed the Deputy Registrar of this Court to sign all transfer documents, land board consents and all other necessary documents in respect of Laikipia/Gituamba Muhoti 2/2008 (Muhotetu), Nyandarua/Matindiri/130 and Nyeri/Tetu Kihingo Block 1(5-00893) LR1607-00119.
2. The said orders were issued on the basis that the Co-Administrator had failed and/or refused to discharge her duty as administrator to execute the same.
3. I have considered the submissions by the parties and do concur with the Applicant that the impugned orders and motion were adverse to her to the extent that the Application was predicated upon her intransigence which would have been best articulated in a hearing and not an ex-parte manner.
4. While it is true the Applicant had unsuccessfully moved to the Court of Appeal, her statutory duty as an administrator was never ousted and the onus was upon the Respondent to showcase that, she had deliberately failed and or refused to execute the transmission forms and any other necessary instrument to conclude the distribution.
5. The want of service has been conceded to by the Respondent, the only aggrievement by the Applicant being not having been afforded the right to be heard.



6. The Court considered discharge of statutory duty by the duly appointed administrator to be a non-contentious matter unless of course, an administrator resigns or has been incapacitated.
7. In this instance the Court awaits distribution of the estate of the deceased person in line with the judgment dated 13th March 2024.
8. In the absence of demonstration of deliberate failure and/or refusal to undertake her duty as a co-administrator this Court shall have no hesitation to hereby set-aside and vary the orders issued herein on the 3rd April 2025 and in lieu therein issue the following orders;
 - i. The Application dated 5th April 2025 is of merit.
 - ii. The Applicant shall sign all transfer documents, land board consents and all other necessary documents in respect of Laikipia/Gituamba Muhoti 2/2008 (Muhotetu), Nyandarua/Matindiri/130 and Nyeri/Tetu Kihingo Block 1(5-00893) LR1607-00119 within the next 30 days from today.
 - iii. Upon any default in (ii) above by the Applicant, the Deputy Registrar of this Court to sign all transfer documents, land board consents and all other necessary documents in respect of Laikipia/Gituamba Muhoti 2/2008 (Muhotetu), Nyandarua/Matindiri/130 and Nyeri/Tetu Kihingo Block 1(5-00893) LR1607-00119.
 - iv. There shall be no stay of proceedings in this succession Court and the Applicants if so inclined are urged to seek stay of these proceedings before the Court of Appeal.
9. Parties shall bear their own costs.

It is So Ordered.

SIGNED, DELIVERED VIRTUALLY ON TEAMS PLATFORM ON THIS 9TH MAY 2025

MOHOCHI S.M

JUDGE

