



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Stephen Ang’asa Mandere (Deceased) (Succession Cause 229 of 2017) [2025] KEHC 5731 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5731 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 229 OF 2017  
SM MOHOCHI, J  
MAY 9, 2025**

**BETWEEN**

**MARY NYAGUCHA ANG’ASA ..... APPLICANT**

**AND**

**GRACE NYABOKE MANDERE ..... RESPONDENT**

**RULING**

1. By an application dated 16<sup>th</sup> December, 2024, the Applicant seeks:
  - i. Spent
  - ii. Spent
  - iii. That the Honourable Court be pleased to set aside the ex-parte Judgement and decree dated 22<sup>nd</sup> November 2024 and all the consequential proceedings.
  - iv. That the costs of this application be borne by the Applicant.

**Applicant’s Case.**

2. The Application was premised on the grounds on its face and supported by the Affidavit sworn by Mary Nyagucha Ang’asa on even date wherein the Applicant deposed she is the first wife of the deceased and was excluded in the judgment distributing the estate of the deceased.
3. That she filed an appeal to the effect. That despite being named in the summons, dated 12<sup>th</sup> March 2024 she was never served with either the Application or the, Mention Notices for 30<sup>th</sup> April 2024 and 30<sup>th</sup> July 2024.
4. She also deposed that on 3<sup>rd</sup> September 2024 her Advocate received an email from the Waiganjo and Company Advocates indicating the existence of the Summons dated 12<sup>th</sup> March 2024 which had



already been mentioned by the Court and directions given for ruling on 24<sup>th</sup> October 2024. That the email did not indicate the directions given and they were given by the Court.

5. That on 17<sup>th</sup> April 2024 her Advocates received an email from the firm of Obura Mbeche and Company Advocates copied to the firm of Waiganjo and Company indicating that they had ceased acting confirming that the Respondent never intended to serve the Application on her or on her Advocates who have been on record since 2023.
6. That the Ruling was never delivered on 24<sup>th</sup> October 2024 as expected and neither was she informed of the next Court date. That on 22<sup>nd</sup> November, 2024 the Ruling was delivered in her absence and she only became aware on 11<sup>th</sup> December, 2024 when the Respondent descended upon her Machoge Bosasi Homestead in the company of the local chief and the Police and started surveying the land without the knowledge of the other family members of the Deceased .
7. That the ruling has devastating consequences to her and other family members as it will render her Appeal Nugatory. That she was condemned unheard and had she been served been served and given a chance she was going to oppose the Application.

### **Respondent's Case**

8. The Respondent Grace Nyaboke Mandere by way of Replying Affidavit sworn on 7<sup>th</sup> January, 2025 stated that the Application was an abuse of the Court process and that the Application was duly served on the Applicant and it was her who chose not to respond. That the Applicant's advocates confirmed receipt of email dated 3<sup>rd</sup> September, 2024 but never took any steps thereafter.
9. That the orders issued on 22<sup>nd</sup> November, 2024 are not adverse to the Applicant neither has she suffered prejudice as the orders do not require the Applicant to do anything at all since she is not an administrator of the estate but is colluding with the 2<sup>nd</sup> administrator to defeat justice by refusing to do what is required of the 2<sup>nd</sup> administrator.
10. That it is the Applicant who is guilty of intermeddling with the estate and leasing it to third parties for farming purposes and she wishes to do the same in the next planting season and by so doing keep off the other beneficiaries of the estate.
11. That interim orders of stay should not be extended in favour of the Applicant. The Court on 20<sup>th</sup> February, 2024 vacated stay orders granted to the Applicant on 18<sup>th</sup> August 2022 to pave way for distribution and therefore the current stay orders should be vacated forthwith.

### **Applicant's Submissions**

12. The Applicant submitted that the resultant Order dated 22<sup>nd</sup> November 2024 was a default order that ought to be set-aside set aside ex debito justitiae while relying in the case of James Kanyiita Nderitu & Another vs. Marios Philotas Ghikas & Another [2016] eKLR, the Court of Appeal explained the nature and effect of an irregular judgment.
13. The Applicant made reference to Succession Cause No. 1317 Of 1991 in the Matter of the Estate of John Kamau alias John Kamau Miriano (Deceased) and Succession Cause 168 of 2000 In the Matter of the Estate of the Late Zakayo Kimutai Kotut (Deceased) to submit that that where an administrator has been appointed by the Court no other person not even the Deputy Registrar can replace the appointed administrator for the purposes of transmission /transfer to the beneficiaries.



14. It was argued that the execution of the orders of the Honourable Court given on 22<sup>nd</sup> November 2024 directing for distribution of the deceased will circumvent the outcome of the appeal and render the Appeal nugatory.

### **Respondent's Submissions**

15. That the Applicant did not challenge the email they were served through and that the evidence before Court contradicts the allegations leveled against the Respondent. Further that there was no follow up from the Applicant's or her advocates following the email of 3<sup>rd</sup> September, 2024.
16. It was submitted that no reasonable grounds have been afforded to suggest the Applicant was condemned unheard.

### **Analysis and Determination**

17. I have considered the application, the affidavit in support and against the same and the submissions filed on behalf of the parties herein and the authorities relied upon. The primary issue for determination is whether the Applicant has made a case to warrant the setting-aside of the ruling dated 22<sup>nd</sup> November, 2022.
18. The Applicant's main grounds for setting-aside the ruling are twofold. Firstly, that she was not aware of the Chamber Summons dated 12<sup>th</sup> March, 2024 and by extension was never notified of the stages of proceedings before the Court culminating to the Ruling and was therefore condemned unheard. Secondly that, the orders issued ex-parte have dire consequences not only to her but to other members of her family and which she has preferred an appeal where if the orders are not set aside, the appeal shall be rendered otiose.
19. In *Patel v East Africa Cargo Handling Services Ltd* [1974] EA 75 it was held that:

“The main concern of the court is to do justice to the parties and the court will not impose conditions on itself to fetter the wide discretion given to it by the rules. I agree that where it is a regular judgement as is the case here the court will not usually set aside the judgement unless it is satisfied that there is a defence on the merits. In this respect defence on merits, does not mean in my view, a defence that must succeed, it means as Sheridan J. put it "a triable issue" that is an issue which raises a prima facie defence and which should go to trial for adjudication.”
20. To rebut the allegations of no service the Respondent has annexed Affidavit of Service to show that the Applicant was indeed served. The Court has carefully gone through the said Affidavit of Service sworn on 30<sup>th</sup> July, 2024 and notes that the Respondent was served through her advocates on record vide the email address elijahmageto12@gmail.com on 17<sup>th</sup> April, 2024.
21. The Court also notes that the said Affidavit of Service captures other major details. The same email was sent to the firm of Obura Mbeche and Company Advocates who in turn replied on 17<sup>th</sup> April, 2024 copying the same email of elijahmageto12@gmail.com stating they had ceased acting for the Applicant in this matter.
22. The Court notes that, the email that was received by the Applicant's advocates of 3<sup>rd</sup> September, 2024, which she admitted to, was bearing the same email address as the one being used by the said advocates throughout these matter and the same one that the disputed pleadings were sent to. The Applicant is being dishonest and economical with the truth in claiming the email was sent to Obura Mbeche, while



- in essence it was sent to the two firms and the former advocates copied the current advocates in response to the Respondent's advocates. There is no way of saying she was unaware or that she was not served.
23. Secondly, the email dated 3<sup>rd</sup> September, 2024 refers to the Summons of 22<sup>nd</sup> March, 2022 and addresses the Applicant inter alia on their lack of response. For starters any reasonable person would have responded or followed up with the Court records or the e-filing platform on the contents of the said Application and act accordingly.
  24. Furthermore, if indeed the Applicant was determined to challenge the involvement of the Deputy Registrar and the police in the distribution of the estate, due diligence dictates that the minute they became aware of the situation, they ought to have arrested the same before the Ruling or even tried to.
  25. I am convinced that, the Applicant was indeed served with the application dated 22<sup>nd</sup> March 2024 through her advocates on record and opted not to take part in the proceedings.
  26. On whether the Appeal would be rendered nugatory. The Applicant is challenging the distribution in the Judgement entered on 6<sup>th</sup> May, 2021. She claims her house was not adequately provided for despite having taken part in the acquisition of the estate.
  27. The Applicant herein together with the 2<sup>nd</sup> Administrator made an application seeking leave to appeal out-of-time as well as stay of the execution of decree. The Court on 18<sup>th</sup> August, 2022 allowed the Application on conditions that the Appeal be filed and served within 60 days. There was noncompliance.
  28. The Respondent moved Court seeking vacating of the stay orders. The same was allowed on the weight of no appeal being filed by the Applicant. Thereafter Respondent filed the Application dated 22<sup>nd</sup> March, 2024 due to frustration from the 2<sup>nd</sup> Administrator and sought the execution of necessary documents by the Deputy Registrar. The Court allowed the same as it found it merited.
  29. From the foregoing it is evident that, there is an attempt at stalling or delaying the distribution of the estate which this Court will not aid. The Deputy Registrar was given executionary powers upon there being no consensus from the administrators to fast track the process or perform their statutory duty as appointed by the court.
  30. This succession cause has and continues being a backlog case that remains a priority for determination by the judiciary, having been pending for the last eight (8) years.
  31. The Memorandum of Appeal annexed to this Application is dated 11<sup>th</sup> December, 2023, 16 months after the Court issued conditional orders. The Applicant cannot come and state that she was excluded from the distribution hence the need for the appeal, yet she together with other beneficiaries were given an opportunity by this Court to challenge that distribution. No plausible reasons have been given on how the appeal would be rendered nugatory.
  32. In the result, this Court is not persuaded of any merit in the Notice of Motion dated 16<sup>th</sup> December, 2024 the same is accordingly dismissed with costs to the Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 9<sup>TH</sup> DAY OF MAY, 2025**

**MOHOCHI S. M.**

**JUDGE.**

