



REPUBLIC OF KENYA



In re Estate of George Gikubu Mbuthia (Deceased) (Probate & Administration E1438 of 2023) [2025] KEHC 5351 (KLR) (Family) (2 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5351 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
PROBATE & ADMINISTRATION E1438 OF 2023**

H NAMISI, J

MAY 2, 2025

BETWEEN

IRENE NJAU M'LINGINE APPLICANT

AND

PETER MBUTHIA NJUGUNA RESPONDENT

RULING

1. By Petition dated 15 December 2023, the Applicant and Peter Munge Murage petitioned the Court for grant of Probate for the estate of George Gikubu Mbuthia, who passed away on 7 November 2023, at Kenyatta University Teaching, Referral and Research Hospital. At the time of his death, the Deceased was resident in Ruaka, Kiambu County. The Deceased died testate, leaving a Will dated 15 June 2023. Irene Njau M'lingine and Peter Munge Murage are named Executors of the Will. In the Will, the Deceased named 6 Beneficiaries, one of whom is the Applicant herein.
2. Following an objection dated 4 April 2024, the Grant of Probate of Written Will has not been issued to date.

Petition for Letters of Administration Pendente Lite

3. The Summons before the Court dated 8 November 2024 seeks the following orders, inter alia:
 - a. Spent;
 - b. This Honourable do issue a Grant of Letters of Administration pendente lite of the Estate of the Deceased to Irene Njau M'lingine and Peter Munge Murage;
 - c. The proposed consent dated 2nd October 2024 be adopted as an order of this Court;



- d. In the alternative to (3) above, this Honourable Court orders that an Estate Bank Account be opened at the Kenyatta Avenue Branch of Stanbic Bank Kenya Limited in Nairobi in the names of the Estate of George Gikubu Mbuthia (Deceased);
 - e. The signatories of the Estate Account, to be opened pursuant to (4) above, be Irene Njau M'Lingine and Evans Mbuthia Njuguna;
 - f. Irene Njau M' Lingine, Evans Mbuthia Njuguna and Peter Munge Murage be appointed as the Estate Representatives for purpose of negotiating and following up payment of all outstanding rent due from Tenants leasing and/or occupying portions of the property Land Reference No. 36/1/27 (Title I.R 59275) pending the hearing and determination of this cause;
 - g. Irene Njau M'Lingine, Evans Mbuthia Njuguna and Peter Munge be appointed as the Estate Representatives for the purpose of negotiating and pursuing, on behalf of the Estate, the sums due and payable to the Estate from various decrees and court judgements, including orders and decrees against Nairobi City County;
 - (h) Irene Njau M'Lingine, Evans Mbuthia Njuguna and Peter Munge be appointed as the Estate Representatives for the purpose of negotiating rental sums for the office premises previously occupied by the Deceased at Hughes Building in Nairobi;
4. The Application is supported by the Affidavit sworn by the Applicant and premised on the following grounds:
- a. The Applicant, Irene Njau M' Lingene, is a widow of the Deceased and a Beneficiary to the Estate of George Gikubu Mbuthia (Deceased). She is also one of the Executors named in the Will of the Deceased dated 15th June 2023.
 - b. Amongst the Deceased's assets is a significant property known as Land Reference No. 36/1/27 (Title 59275), situated in Eastleigh within Nairobi County; from which rental income is payable. However, since December 2023, the tenants leasing the property have withheld payment of rent demanding they be served a Grant or orders of this Court. The Estate is thus being deprived of income.
 - c. On 10th July 2024, the Honourable Court referred this matter to Court annexed mediation and during the mediation sessions, majority of the Beneficiaries agreed on the need to open an Estate Bank Account wherein all the rental income would be deposited. However, one of the Beneficiaries refused to sign the proposed consent without a just cause.
 - d. The delay in opening the proposed Estate Bank Account is causing huge losses and wastage as the Estate is losing monthly rental income of Kshs. 300,000/— and the rent arrears due to-date is approximately Kshs. 3,000.000/—
 - e. In light of the above it is critical and in the best interest of the Estate for this Honourable Court to intervene to prevent further wastage and losses to the Estate, particularly the rental income from Land Reference Nm 36/1/27, by directing payment of all rent and rent arrears into an Estate Bank Account.
 - f. At the time of demise of the Deceased, there were several ongoing litigation matters in which the Deceased and some had pending execution of Decrees issued in favour of the Deceased in Nairobi High Court at Nairobi Civil Case No. 1874 of 1988 George Gikubu -vs- Nairobi City Council, Nairobi High Court at Nairobi Civi/ Case No. 1874 of 1999 George Gikubu Toto's Outfitters Ltd -vs- Nairobi City Council and High Court at Nairobi Civil Case No. 15



of 2003 George Gikubu -vs- Nairobi City Council thus there is need for the Estate to have the representatives take the necessary steps towards protecting the Estate.

5. In her Supporting Affidavit, the Applicant has enumerated the suits in which the Deceased was a party, which now require a representative to follow up and/or prosecute. These include: Miscellaneous Application No. 181 of 2018, BPRT No. 13 of 2022, CC No. 837 of 2000, HCCC No. 937 of 1986, HCCC No. 130 of 2009, Civil Case No. 7787 of 2015, Civil Appeal No. 90 of 2008, Civil Appeal No. 207 of 2009, Civil Case No. 3231 of 1985, Civil Appeal No. 72 of 2016, Civil Appeal No. 44 of 2004, Civil Appeal No. 109 of 2010 and Civil Appeal No. 246 of 2011.
6. With respect to the consent, the Applicant avers that the first draft of the same was prepared by the Advocate for the Objectors at the time, who include the Respondent herein. Despite the initial consent by all Beneficiaries, the Respondent herein retracted from the agreed position and refused to sign the consent. He also refused to co-operate in further mediation sessions.
7. One Beneficiary, Pauline Wanjiru, was non-committal to the consent and did not sign. The whereabouts of Stephen Mbuthia Njuguna are unknown.
8. In response, the Respondent filed Grounds of Opposition as well as a Replying Affidavit. The Grounds of opposition include the averment that there are two versions of the Will, which is disputed. The Respondent avers that the Petition for Grant of Probate is incompetent since the same is supported by a defective incomplete Will and the letter from the Chief ought to have been obtained from Gaichanjiru Location and not Ruaka sub location.
9. In a lengthy Replying Affidavit, the Respondent narrates some family history, including the Deceased's illness and events preceding his demise. He avers that the Applicant was not a wife to the Deceased as defined in the Law of Succession Act, but was, for all intents and purposes, a concubine.
10. The Application was canvassed by way of written submissions.

Analysis and Determination

11. I have carefully read the Applications, Affidavits and respective submissions.
12. Grant of a Limited Grant of pendente lite is provided under Rule 10 of the 5th Schedule of the Law of Succession Act which provides that;

“Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the court may appoint an administrator of the estate of the deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing the estate, and the administrator shall be subject to the immediate control of the court and shall act under its direction.”
13. Simply put, an administrator is appointed simply to administer the estate of the Deceased during litigation where the will of the Deceased is being contested. Pending the determination of that dispute, the court may appoint an administrator pendente lite to continue to administer the estate so as it is not wasted. The administrator is not permitted to distribute the estate but merely manage the same pending litigation.
14. Reading through the Affidavit by the Respondent, it is clear that this dispute is far from over. It would be imprudent for the Court to wait until these wrangles are resolved without appointing an administrator, thus leaving the estate to go to waste. In the circumstances, this is a proper case for the appointment of an Administrator pendente lite. This will serve the interests of the estate and all



beneficiaries entitled as the estate will be protected from waste through intermeddling and the running concerns will have a ready and accountable manager.

15. In view of the foregoing, I make the following orders:

- i. A Grant of Letters of Administration pendente lite of the Estate of the Deceased to issue to Irene Njau M'Lingine, Peter Munge Murage and Evans Mbuthia;
- ii. An estate Bank account be opened at the Kenyatta Avenue Branch of Stanbic Bank Kenya Limited in Nairobi. The account name shall be Estate of George Gikubu Mbuthia. The signatories, who will have joint mandate, shall be Irene Njau M'lingine, Peter Munge Murage and Evans Mbuthia.
- iii. The Administrators shall negotiate and follow up on payment of all outstanding rent or rent due from property known as Land Reference No. 36/1/27 (Title I.R. 59275), in Eastleigh, Nairobi County, which rental income shall be deposited in the estate bank account;
- iv. The Administrators are hereby authorised to manage and/or lease the property known as Land Reference No. 33/1/27 (Title I.R. 59275), which rental income shall be deposited in the estate bank account;
- v. The Administrators are hereby authorised to pursue any claims on behalf of the estate and/or any sums due and payable to the Deceased's estate from various decrees and court orders.
- vi. The Administrators shall take full account of the estate and preserve the same until confirmation of Grant.

16. This being a family matter, I will not make any order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 2 DAY OF MAY 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Ms. Diru h/b Mr. Opole.....for the Applicant

N/A.....for the Respondent

Libertine AchiengCourt Assistant

